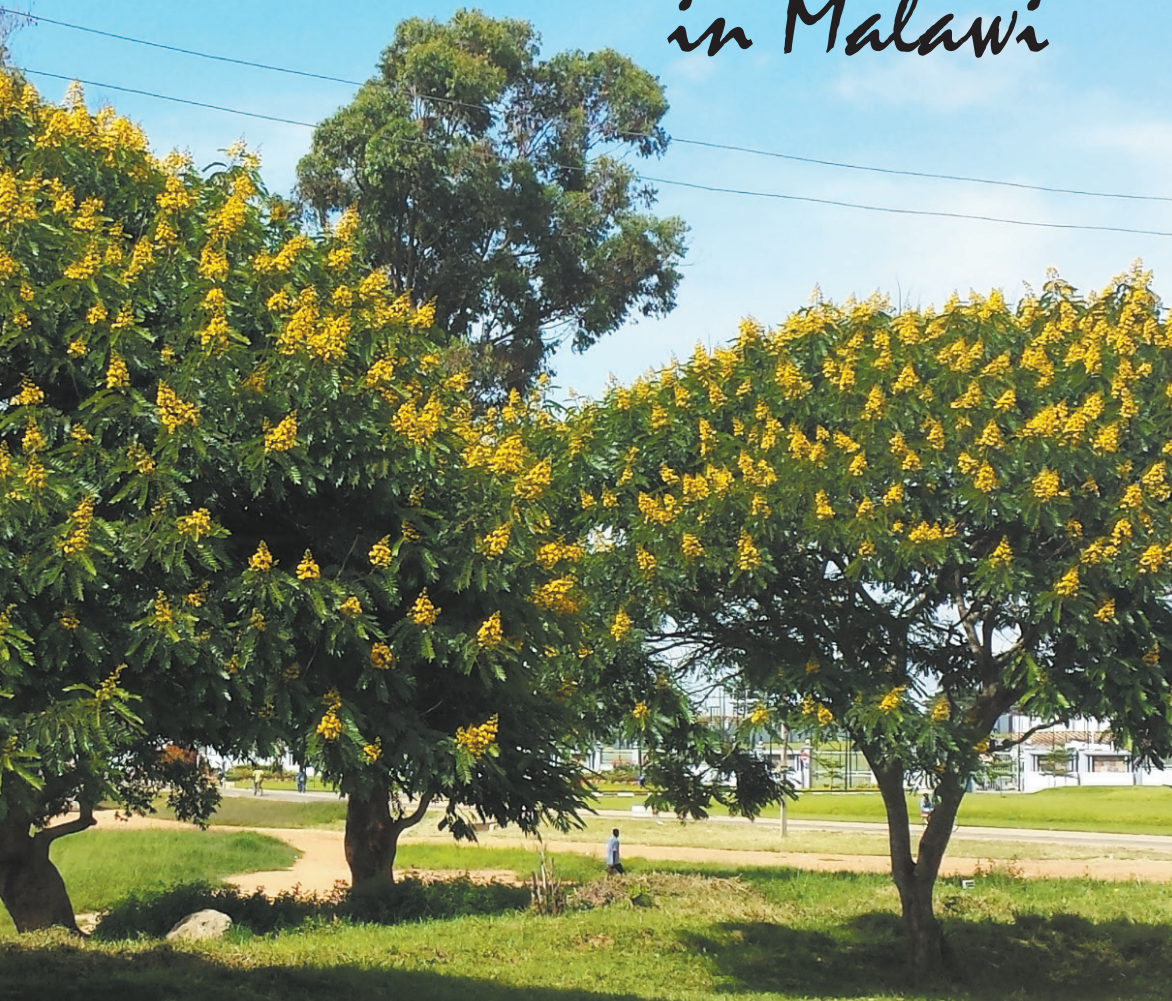


The Homosexuality Debate in Malawi



Jones Hamburu Mawerenga

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Jones Hamburu Mawerenga

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Dedication

This work is dedicated to the LGBTI (Lesbian, Gay, Bisexual, Transgender, and Intersex) community in Malawi which is fighting for recognition and acceptance in society.

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Abbreviations

ACCA Anglican Church of Central Africa

ACPHR African Charter of People's and Human Rights

AIDS Acquired Immunodeficiency Syndrome

AUAfrican Union

CCAP Church of Central Africa Presbyterian

CEDEP Center for the Development of the People

CHRR Center for Human Rights and Rehabilitation

DPP Democratic Progressive Party

EAM Evangelical Association of Malawi

ECM Episcopal Conference of Malawi

ECHR European Court of Human Rights

HIV Human Immunodeficiency Virus

ICCPR International Covenant on Civil and Political Rights

LGBT Lesbian, gay, bisexual, and transgender persons

MAM Muslim Association of Malawi

MBC Malawi Broadcasting Corporation

MCC Malawi Council of Churches

MCP Malawi Congress Party

MLS Malawi Law Society

NGO Non-Governmental Organization

PAC Public Affairs Committee

PP Peoples Party

UDF United Democratic Front

UDHR Universal Declaration of Human Rights

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Introduction

Homosexuality is a cross-cutting challenge to Malawian society with theological, socio-cultural, economic, legal, political, and human rights implications. The aim of the book is to critically evaluate the homosexual debate in Malawi.

The book argues that there are two polarized positions in the homosexuality debate in Malawi: pro-homosexuality and anti-homosexuality. On one hand, the pro-homosexual position is championed by gay rights activists, liberal religious people, the western diplomatic community, donor agencies, and the LGBTI community in Malawi. They are basically arguing for the legalization of homosexuality in Malawi. On the other hand, the anti-homosexual position is championed by the government which maintains the laws that criminalize homosexuality, conservative religious groups, and traditional leaders. They are arguing for the continued criminalization of homosexuality in Malawi.

The book has demonstrated that homosexuality is prevalent in Malawi, Africa, and the entire world. On one hand some people in the world have chosen to live a heterosexual lifestyle which is assumed to be the norm for human sexuality in society. On the other hand, some people in the world have chosen to live a homosexual lifestyle and criminalization or homophobia will not be able to stop them from practicing homosexuality. This means that both heterosexuality and homosexuality are permanent features of contemporary society in regard to expressions of human sexuality. It further implies that heterosexual people cannot claim that the whole society should follow heterosexual normativity. Similarly, homosexual people cannot claim that the whole society should follow homosexual normativity. This indicates that there is no consensus in the homosexual debate both on theoretical and practical levels. Therefore, there is no need for heterosexuals and homosexuals to practice either homophobia or heterophobia towards each other. Mutual tolerance is the key for attaining a harmonious co-existence of both heterosexual and homosexual people in the world. We need to celebrate unity in the midst of diversity of human sexuality.

Chapter 1: General Discussions on Homosexuality

This book discusses the issue of homosexuality in Malawi. It is, therefore, imperative that we understand the meaning, practices, and causes of homosexuality as well as the relationship between the natural law morality and homosexuality.

Sexual Orientation

Sexual orientation refers to an enduring pattern of emotional, romantic and/or sexual attractions to men, women or both sexes.¹ It may also refer to a person's sense of identity based on those attractions, related behaviours, and membership in a community of others who share those attractions.² Research over several decades has demonstrated that sexual orientation ranges along a continuum, from exclusive attraction to the opposite sex to exclusive attraction to the same sex.³ However, sexual orientation is usually discussed in terms of four categories: (1) heterosexual (having emotional, romantic or sexual attractions to members of the opposite sex), (2) bisexual (having emotional, romantic or sexual attractions to both men and women), (3) homosexual (having emotional, romantic or sexual attractions to members of one's own sex),⁴ and asexuality which refers to the lack of sexual attraction to others.⁵ This range of behaviours and attractions has been described in various cultures and nations throughout the world. Many cultures use identity labels to describe people who express these attractions. In the

¹ Michael D. Storms, "Theories of Sexual Orientation," *Journal of Personality and Social Psychology* 38.5 (1980), p. 783.

² Randall L. Sell, "Defining and Measuring Sexual Orientation: A Review," *Archives of Sexual Behaviour* 26.6 (1997), 643-658.

³ Robert Epstein, et al, "Support for a Fluid-continuum Model of Sexual Orientation: A Large-scale Internet Study." *Journal of Homosexuality* 59.10 (2012), pp. 1356-1381.

⁴ Eli Coleman, "Assessment of Sexual Orientation," *Journal of Homosexuality* 14.1-2 (1987), pp. 9-24.

⁵ Nicole Prause, Cynthia A. Graham, "Asexuality: Classification and Characterization," *Archives of Sexual Behaviour* 36 (3), pp. 341-356.

United States, for example, the most frequent labels are lesbians (women attracted to women), gay (men attracted to men), and bisexual people (men or women attracted to both sexes).⁶

Sexual identity and sexual behaviour may closely be related to sexual orientation, but they are distinguished, with sexual identity referring to an individual's conception of themselves, sexual behaviour referring to actual sexual acts performed by the individual, and orientation referring to "fantasies, attachments and longings."⁷

However, individuals may or may not express their sexual orientation in their behaviours.⁸ People who have a homosexual sexual orientation that does not align with their sexual identity are sometimes referred to as 'closeted'.⁹ The term may reflect a certain cultural context and particular stage of transition in societies which are gradually dealing with integrating sexual minorities. In studies related to sexual orientation, when dealing with the degree to which a person's sexual attractions, behaviours and identity match, scientists usually use the terms "concordance" or "discordance."¹⁰ Thus, a woman who is attracted to other women and calls herself a lesbian and has sexual relations with fellow women is said to be experiencing concordance, while a woman who is attracted to other women, but calls herself heterosexual and only has sexual relations with men, can be said to be experiencing discordance between her sexual orientation (homosexual or lesbian) and her sexual identity and behaviours (heterosexual).¹¹

⁶ American Psychological Association (11.10.2015).

⁷ L. Reiter, Sexual Orientation, "Sexual Identity, and the Question of Choice," *Clinical Social Work Journal* 17:138-150 (11.10.2015)

⁸ Sexual orientation, homosexuality and bisexuality, www.apa.org (12.10.2015).

⁹ Ibid.

¹⁰ Michael W. Ross, James E. Essien, Mark L. Williams, Maria Eugenia Fernandez-Esquer, "Concordance between Sexual Behaviours and Sexual Identity in Street Outreach Samples of Four Racial Ethnic Groups." *Sexually Transmitted Diseases* (American Sexually Transmitted Diseases Association) 30 (2), pp. 110-113 (12.10.2015).

¹¹ Ibid.

Definitions of Homosexuality

Homosexuality is an unusual word in that it is a compound word, made from the Greek prefix *homo* and the Latin root *sexualis*. The Greek prefix *homo* is translated as 'same' in English while the Latin root *sexualis* is translated into English as 'sex.'¹² The literal English translation of the word *homosexualis* is 'same-sex.' Its most obvious meaning is 'of one sex' (as homogeneous, which means 'of one kind'). This definition is quite adequate in reference to a relationship or sexual act: sexual relation involving two parties 'of the same sex' is indeed a homosexual one.¹³

Homosexuality is also considered as a "persistent preoccupation with erotic encounters involving members of the same sex, which may or may not be acted out with another person."¹⁴ In other words, homosexuality is limited to sexual encounters by people of the same sex. This, essentially raises doubts about the possibility of same-sex relationships.

Merriam Webster gives the following two definitions of the term homosexual: (1) of, relating to, or characterized by a tendency to direct sexual desire toward another of the same sex, and (2) of, relating to, or involving sexual intercourse between persons of the same sex.¹⁵ The difference between the two definitions is that the former deals with sexual orientation proclivity while the latter deals with a sexual encounter.

A homosexual is a person, male or female, who experiences in adult life a steady and nearly exclusive erotic attraction to members of the same

¹² Gary Remafedi, "Male Homosexuality: The Adolescent's Perspective," *Pediatrics* 79.3 (1987), pp. 326-330.

¹³ John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the 14th Century*, University of Chicago Press, 1980.

¹⁴ Bebson Ohihon Igboin, "A Moral Appraisal of Homosexuality in Biblical, Western and African Worldviews" in: S.O. Abogunrin (ed.), *Biblical View of Sex and Sexuality from African Perspective*, Ibadan: Nigerian Association for Biblical Studies (NABIS), 2006.

¹⁵ www.meriam-webster.com/dictionary, (12.1.2014).

sex and who is indifferent to sexual relations with the opposite sex.¹⁶ True homosexuality is limited to "adult life" for people who experience a steady and nearly exclusive erotic attraction to members of the same sex. This eliminates homosexuality as a spasmodic phase during adolescence from the genuine homosexual category. These teenage tendencies may be outgrown in adulthood where heterosexual attraction and activity are pursued exclusively.¹⁷

Therefore, this discussion has shown that there is no precise definition of homosexuality. However, there is consensus that homosexuality involves sexual intercourse between members of the same sex.

Types of Homosexuals

There are several types of homosexuals, i.e. inverts or constitutional, contingent, situational, and pervers.

Invert or Constitutional Homosexuals

The precise definition of individuals involved in homosexual acts includes "inverts." As a theory, sexual inversion purports that gay men and lesbians were sexual inverts, people who appeared physically male or female outside, but felt internally that they were of the opposite anatomical sex, according to what is known as the binary view of nature.¹⁸ Sexual inversion is a term used by sexologists to refer to homosexuality.¹⁹ Homosexuality was believed to be an inborn reversal of gender traits: male inverts were to a greater or lesser degree inclined to traditionally female pursuits and dress or vice versa.²⁰ Female sexual

¹⁶ E.A. Malloy, *Homosexuality and the Christian Way of Life*, Lanham, MD, University Press of America, 1981.

¹⁷ Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

¹⁸ Havelock Ellis, *Studies in the Psychology of Sex Vol II: Sexual Inversion*, 1927.

¹⁹ Ibid.

²⁰ Laura Doan, *Fashioning Sapphism: The Origins of a Modern English Lesbian Culture*, New York: Columbia University Press, 2001.

inversion can be described as "the masculine soul, residing in the female bosom."²¹

An invert homosexual is sometimes called a "constitutional homosexual." The term "constitutional homosexual" refers to someone whose homosexuality is a permanent part of his or her very constitution and not a transitory phase of life or merely an accommodation to situational pressure.²²

Contingent Homosexuals

Contingent homosexuals are individuals who do not experience a steady and nearly exclusive erotic attraction to members of the same sex. They may include teenagers who experiment with homosexuality and outgrow it. Contingent homosexuals may also include adult heterosexuals who become bored with conventional sexual taboos and, seeking variety go to accomplish their purpose without fear of scandal.²³

Situational Homosexuals

Situational homosexuals are men and women who are thrown together by circumstances and situations, who, having no other sexual outlets, resort to homosexual outlets. Men or women in prison, military camps, boarding schools, seminaries, and other single sex environments are often involved in situational or circumstantial homosexuality. These men and women do not consider themselves as homosexuals and return to heterosexual patterns once they are removed from the restrictive environment.²⁴

²¹ Melanie A. Taylor, "The Masculine Heaving in the Female Bosom: Theories of Inversion and the Well of Loneliness." *Journal of Gender Studies* 7 (3), pp. 287-296.

²² [www.banap.net/spip.php? Article94](http://www.banap.net/spip.php?Article94) (10.10.2015).

²³ Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context," 2004.

²⁴ Ibid.

Perverts

A pervert is one who is not a true homosexual but a heterosexual who engages in homosexual practices.²⁵

The Distinction between Inversion and Perversion

A pervert is not a true homosexual but a heterosexual who engages in homosexual practices. An invert, however, is a true homosexual, a constitutional homosexual, someone whose homosexuality is a permanent part of his very constitution and not a transitory phase of life or merely an accommodation to situational pressure. In making this distinction between an invert and a pervert, morality is introduced into the picture. In other words, an invert is a true homosexual who is not responsible for his behaviour because he is acting out his normal behaviour, while a pervert is not a true homosexual who is responsible for his behaviour because he is acting abnormally.²⁶

This distinction between inversion and perversion has generated two schools of thought in regard to the moral or ethical connotations of homosexuality. Inversion presupposes the moral neutrality of the homosexual "condition." Perversion presupposes a distinction between the homosexual condition and the practice of homosexuality. The former being morally neutral while the latter is culpable.²⁷

Homosexual Practice or Behaviour

Homosexual practice or behaviour refers to sexual activities involving men who have sex with men (gayism), and women who have sex with

²⁵ Ibid.

²⁶ D.S. Bailey, *Homosexuality and Western Christian Tradition*, Hamden, CT: Shoe String Press, 1975.

²⁷ L.R. Buzzard, *Homosexuality and the Christian Faith*, Valley Forge, PA: Hudson Press, 1978.

women (lesbianism) regardless of their sexual orientation or sexual identity.²⁸

Gay Sexual Practices

Sexual activities prevalent in male homosexuality include anal sex, oral sex, frottage, and mutual masturbation.²⁹

Anal Sex

It is observed that among men who have anal sex with other men, the insertive partner may be referred to as "the top," the one being penetrated may be referred to as "the bottom," and those who enjoy either role may be referred to as "versatile."³⁰ An orgasm may be achieved through receptive anal penetration by indirect stimulation of the prostate.³¹ Some men who have sex with men, however, believe that being a receptive partner during anal sex questions their masculinity.³² This is because although both are male, one takes the role of a female in a sexual encounter.

Frottage or Frot

Frottage derives its meaning from the French verb "*frotter*," to rub. When referred to in the sexual sense, frottage is the highly sensual act of rubbing a part of your body – breasts, belly, bum, thighs, feet, hands, legs and of course, your sexual organs – against the sex organs of your lover whether you are clothed or in the nude.³³

²⁸ Kaye Wellings, Kirstin Mitchell, Martine Collumbien, *Sexual Health: A Public Health Perspective*, NY: McGraw-Hill International, 2012.

²⁹ Ibid.

³⁰ Steven Gregory Underwood, *Gay Men and Anal Eroticism: Tops, Bottoms, Versatiles*, Hove, UK: Psychology Press, 2003.

³¹ Martha Rosenthal, *Human Sexuality: From Cells to Society*, Boston: Cengage, 2012.

³² John H. Harvey, Amy Wenzel, Susan Sprecher, *The Handbook of Sexuality in Close Relationships*, Abingdon: Routledge, 2004.

³³ www.thepassionatewolf.com/frottage-rub-right-way, (2.11.2015).

Frottage or frot is a non-penetrative form of male-male sexual activity that usually involves direct penis -to-penis contact. Frot can be enjoyable because it mutually and simultaneously stimulates the genitals of both partners as it tends to produce pleasurable friction against the frenulum nerve bundle on the underside of each man's penile shaft, just below the urinary opening (meatus) of the penis head (glans penis).³⁴

Oral Sex

Oral sex, also known as fellatio, is a sexual act that involves sucking off a person's penis or scrotum using the mouth.³⁵ A person who performs fellatio on someone might be referred to as the giving partner, and the other person as the receiving partner. Fellatio can be sexually arousing for participants, and males commonly experience orgasm and ejaculation of semen during the act.³⁶

The essential aspect of fellatio is for a man's sex partner to take his penis into the mouth, and then move their mouth up and down the penis to a rhythm set by them mimicking the thrusting motion of vaginal or anal intercourse, with saliva acting as a lubricant, and being careful not to bite or scratch with the teeth.³⁷ The man receiving fellatio can slow the rhythm of the stimulation by holding his partner's head. The man's partner may also orally play with his penis by licking, sucking, kissing or otherwise playing with the tongue and lips.³⁸ Fellatio may also include the oral stimulation of the scrotum, whether licking, sucking or taking the entire scrotum into the mouth.³⁹

³⁴ "The New Sex Police," *The Advocate*, April 2005, pp. 40, 42. PDF (10.10.2015).

³⁵ Wayne Weiten, Margaret A. Lloyd, Dana S. Dunn, and Elizabeth Yost Hammer, *Psychology Applied to Modern Life: Adjustment in the 21st Century*, Boston: Cengage, 2008.

³⁶ Janell L. Carroll, *Sexuality Now: Embracing Diversity*, Boston: Cengage, 2009.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Robert Crooks, Karla Baur, *Our Sexuality*, Boston: Cengage, 2010.

Mutual Masturbation

Masturbation is the sexual stimulation of one's own genitals for sexual pleasure, usually to the point of orgasm.⁴⁰ Mutual masturbation involves two or more people who sexually stimulate each other, usually with the hands. It can be practiced by people of any sexual orientation. It may be used as foreplay, or as an alternative to sexual penetration.⁴¹

Lesbian Sexual Practices

The three main forms of lesbian sexual practices are: oral sex, manual stimulation, and tribadism.⁴²

Oral Sex

Lesbians practice oral sex which involves the stimulation of the clitoris or other parts of vulva or vagina and can include the use of teeth in addition to use of the lips or tongue.⁴³ Oral sex that involves the stimulation of the woman's clitoris or other parts of the vulva or the vagina is called "*cunnilingus*" while the oral stimulation of the anus is called "*anilingus*."⁴⁴

Manual Stimulation

"*Manual stimulation*," also known as "*fingering*," involves the use of the fingers to massage a woman's clitoris or other parts of the vulva, the

⁴⁰ Based on "Masturbation" in *Merriam-Webster's Collegiate Dictionary, Eleventh Edition*, Merriam-Webster, Inc., 2003.

⁴¹ Bryan Strong, Christine DeVault, Theodore F. Cohen, *The Marriage and Family Experience: Intimate Relationship in a Changing Society*, Boston, MA: Cengage Learning, 2010.

⁴² Jonathan Zenilman, Mohsen Shahmanesh, *Sexually Transmitted Infections: Diagnosis, Management, and Treatment*, Burlington, MA: Jones & Bartlett, 2011.

⁴³ A.L. Diamant, J. Lever, M. Schuster, "Lesbians' Sexual Activities and efforts to Reduce Risks for sexually Transmitted Diseases," *Gay Lesbian Med Assoc.* 4 (2) (2000), pp. 41–48.

⁴⁴ Jonathan Zenilman, Mohsen Shahmanesh, *Sexually Transmitted Infections: Diagnosis, Management, and Treatment*, Burlington, MA: Jones & Bartlett Publishers, 2011.

vagina, or the anus.⁴⁵ "Manual stimulation" of the vulva, and in particular the clitoris, is the most common way for a woman to reach and achieve an orgasm.⁴⁶ "Fingering" may be self-fingering, one-sided, mutual, penetrative or non-penetrative. Massaging inside of the vagina may stimulate a very sensitive area, sometimes termed the G-spot area. For some women, stimulating the G-spot area creates a more intense orgasm than direct clitoral stimulation.⁴⁷

Tribadism

"Tribadism" is a common non-penetrative sexual act between women.⁴⁸ It is often known by its "scissoring" position and is also referred to as frottage or in popular slang as "dry humping." It involves a woman rubbing her vulva against her partner's vulva, thigh, stomach, buttocks, arm, or another body part.⁴⁹ "Tribadism" may be achieved in a number of sex positions, including one woman on top of the other, doggy style, or scissoring position.⁵⁰ It may be accompanied by fingering or penetration with a dildo (a sex toy).⁵¹ In a way, tribadism imitates heterosexual sex practice.

Homosexual Orientation and the Homosexual Act

Discussions on homosexuality often make a distinction between: (a) homosexual orientation, inclination, or tendency- an inborn sexual

⁴⁵ Kenneth Mah, Yitzchak Binik, "The Nature of Human Orgasm: a Critical Review of Major Trends," *Clinical Psychology Review* 21 (6), (2001) pp. 823–856.

⁴⁶ Dorothy Kammerer-Doak, Rebecca G. Rogers, "Female Sexual Function and Dysfunction," *Obstetrics and Gynecology Clinics of North America* 35 (2): (June 2008) pp. 169–183.

⁴⁷ Sima Kotecha, [news.bbc.co.uk_7345000/7345799.stm](http://news.bbc.co.uk/7345000/7345799.stm), (14.4.2008).

⁴⁸ Douglas C. Kimmel, Tara Rose, Steven David, *Lesbian, Gay, Bisexual, and Transgender Aging: Research and Clinical Perspectives*, Burlington: Jones & Bartlett, 2006.

⁴⁹ Shere Hite, *The Hite Report: A Nationwide Study of Female Sexuality*, New York: Seven Stories Press, 2003.

⁵⁰ Jude Schell, *Lesbian Sex: 101 Lovemaking Positions*, Berkeley, CA: Ten Speed Press, 2008.

⁵¹ Judith Halberstam, *Female Masculinity*, Duke University Press, 1998.

attraction, predisposition, or desire toward a member of one's own sex, and (b) homosexual act, behaviour or practice- an erotic activity with a member of one's own sex, whether one judges such activity to be morally right or not.⁵²

Homosexual Orientation

Homosexual "*orientation*" or "*condition*" also referred to as "*constitutional*" homosexuality or "*inversion*" is a permanent and unchangeable part of the individual's constitutional make up. It is like the colour of a person's skin-a non-behavioural trait, morally neutral, and a condition from which no one can change.⁵³

Homosexual Act

The term "*homosexual act*" refers to any knowing, objectively erotic interaction between persons of the same sex, or, as the US Military puts it, "any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."⁵⁴ Hence, homosexual practice or activity can be judged according to morally acceptable norms.⁵⁵

Causes of Homosexuality

What causes homosexuality? This is the first and perhaps the most basic question about homosexuality. In order to understand the phenomenon of same-sex sexual relations, we must first explore what research shows about the origins of such attractions. There are two main theories as to what causes homosexuality: (a) nature (that people are born gay), and (b) nurture (as a result of upbringing, experience and the social-environmental factors).

⁵² Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context," 2004.

⁵³ Ibid.

⁵⁴ [www.conservapedia.com/homosexual act](http://www.conservapedia.com/homosexual_act) (15.2.2016).

⁵⁵ Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context," 2004.

The Nature Theories for the Causation of Homosexuality

Proponents of the nature theories for the causation of homosexuality argue that a homosexual orientation is essentially dictated by genetic and or biological factors—put simply, that people are "born gay." In other words, the nature theories for the causation of homosexuality are generally related to the type of homosexuality known as "inversion." Various terminologies are used interchangeably to describe the nature theories: biological, genetic, hereditary, hormonal, and chromosomal.

Hereditary-Genetic Factors Causing Homosexuality

Some researchers have proposed that hereditary-genetic or chromosomal or biological factors- cause homosexuality. Three studies published during the 1990s have claimed to offer evidence in favour of a biological or genetic cause for homosexuality. Three of these include: a study of brain structure by Simon LeVay,⁵⁶ a study of twins by J. Michael Bailey and Richard C. Pillard,⁵⁷ and a study of "gene linkage" and "gene markers" by a team led by Dean H. Hamer.⁵⁸

A Study on the Brain Structure

Scientists have tried to find differences in homosexual and heterosexual brains to confirm the hypothesis that homosexual orientation is at least partly determined by intrauterine hormonal influences on foetal brain development. In other words, are the brains of male homosexuals closer to female brains than male heterosexual brains?⁵⁹

⁵⁶ Simon LeVay, *Queer Science: The Use and Abuse of Research into Homosexuality*, Cambridge, MA: MIT Press, 1996.

⁵⁷ J. Michael Bailey and Richard C. Pillard, "A Genetic Study of Male Sexual Orientation," *Archives of General Psychiatry*, 48 (December 1991) pp. 1089, 1094.

⁵⁸ Dean H. Hamer et al, "A Linkage between DNA Markers on the X Chromosome and Male Sexual Orientation," *Science* 261 (1993), pp. 321.

⁵⁹ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

Simon LeVay studied an area of the hypothalamus (a region of the brain connected with sexual behaviour)⁶⁰ known as INAH-3⁶¹ in 19 homosexual males,⁶² 16 heterosexual males, and 6 females. He concluded that INAH-3 was two times larger in the heterosexual males than in the females and homosexual males. Thus, he concluded that this finding indicates that INAH-3 is dimorphic with sexual orientation (i.e. shows a difference in structure between homosexuals and heterosexuals), at least in men, and suggests that sexual orientation has a biological substrate.⁶³

Arguments against the Findings of the Brain Structure Study

William Byne and Bruce Parsons challenged LeVay's findings on three accounts. First, they raised the question of how AIDS could have impacted LeVay's subjects, concluding that it is possible to hypothesize a plausible mechanism by which HIV infection could account for a selective reduction in the volume of INAH-3 in the homosexual men. Second, they challenged LeVay's use of animal studies "to support the notion that the INAH-3 is crucial to the 'generation of male-typical sexual behaviour.'" Finally, they concluded that "LeVay's study can be faulted for a number of technical flaws, such as a variable method of tissue fixation, inadequate sexual histories, and small sample sizes."⁶⁴

LeVay's study had serious methodological errors, including the failure to adequately identify a control group. LeVay made questionable assumptions regarding the orientation of the "heterosexual" brains. He assumed that they were all heterosexual, even though a number of the

⁶⁰ S. Melmed, K.S. Polonsky, P.R. Larsen, H.M. Kronenberg, *Williams Textbook of Endocrinology*, Philadelphia: Saunders, 2011.

⁶¹ INAH-3 is the short form for the third interstitial nucleus of the anterior hypothalamus, and is the sexually dimorphic nucleus of humans. L.S. Allen; M. Hines, J.E. Shryne, R.A. Gorski, "Two Sexually Dimorphic Cell Groups in the Human Brain," *Neurosci* 9 (2), (1989) pp. 497–506.

⁶² The number includes one bisexual.

⁶³ Simon LeVay, "A Difference in the Hypothalamic Structure between Heterosexual and Homosexual Men," *Science* 253 (1991), pp. 1034-1037.

⁶⁴ William Byne and Bruce Parsons, "Human Sexual Orientation: The Biologic Theories Reappraised," *Archives of General Psychiatry*, 50: (1993), p. 235.

allegedly "heterosexual" subjects had died of AIDS, a disease that remains far more common among homosexual men than among heterosexuals: "Sixteen subjects were presumed to be heterosexual men: six of these subjects died of AIDS and ten of other causes."⁶⁵

Another anomaly of LeVay's study was the fact that three of the "heterosexuals" had brain clusters smaller than the mean size for the homosexuals. Moreover, three of the homosexuals had larger clusters than the mean size for "heterosexuals." Thus, LeVay was forced to admit, "The existence of 'exceptions' in the present sample (that is, presumed heterosexual men with small INAH-3 nuclei, and homosexual men with large ones) hints at the possibility that sexual orientation, although an important variable, may not be the sole determinant of INAH3 size."⁶⁶

LeVay, in fact, admitted that his claim of a correlation between this brain structure and sexual orientation could not prove causation, or even the direction of influence, noting that "the results do not allow one to decide if the size of INAH3 in an individual is the cause or consequence of that individual's sexual orientation, or if the size of INAH3 and sexual orientation co-vary under the influence of some third, unidentified variable."⁶⁷

Studies on Identical Twins

Identical twins are monozygotic; that is, they are produced from one egg and one sperm. In terms of genetic composition, identical twins are truly 100% identical. Non-identical or fraternal twins, however, are dizygotic; that is, they are formed from two eggs and two sperm.⁶⁸ Fraternal twins share no greater genetic resemblance to one another than do non-twin siblings. Because identical twins are a perfect genetic match, a genetic basis for homosexuality would have to show up in higher

⁶⁵ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

⁶⁶ Ibid.

⁶⁷ Simon LeVay, "A Difference in the Hypothalamic Structure between Heterosexual and Homosexual Men," *Science* 253 (1991), pp. 1034-1037.

⁶⁸ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

concordance rates for identical twins in which at least one twin is homosexual. If homosexuality were determined completely by the genes, we would expect the concordance rate in such cases to be 100%. In other words, the identical twin of a homosexual would always be homosexual, much as eye colour and sex in identical twins match 100% all the time.⁶⁹

J. Michael Bailey and Richard C. Pillard conducted a study in 1991 of 110 identical and non-identical male twins containing at least one homosexual member each. They reported a concordance rate of 52% for identical (i.e., in 52% of the identical twin pairs studied both twins were homosexual) but less than half that (22%) for non-identical twins.⁷⁰

Bailey and Pillard conducted another study in 1993 of 71 identical and 37 non-identical female twins with at least one lesbian or bisexual member each. They reported a concordance rate of 48% and 16% for identical and non-identical twins respectively. These two studies concluded that homosexual behaviour arose from a genetic contribution of 50% or greater. In other words, the pattern of rates of homosexuality by type of relative twins was generally consistent with substantial genetic influence.⁷¹

Arguments against the Findings of the Identical Twin Studies

Bailey and Pillard themselves alluded to problems with their sampling method. They reported that the sampling method employed in this study falls short of the ideal genetic epidemiological study, which would involve systematic sampling from a well-specified population. In particular, although all recruiting advertisements stated that subjects were

⁶⁹ Ibid.

⁷⁰ J. Michael Bailey and Richard C. Pillard, "A Genetic Study of Male Sexual Orientation," *Archives of General Psychiatry*, 48 (December 1991), pp. 1089, 1094.

⁷¹ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

desired regardless of the sexual orientation of their relatives, there is no guarantee that volunteers heeded this request.⁷²

The identical twin studies did not employ "a systematically ascertained sample of twins. Subjects were recruited through advertisements placed in homosexual-oriented periodicals and, therefore, may not be typical of the homosexual population at large."⁷³

The identical twin studies reported that the concordance rate for homosexuality in non-twin biological brothers was only 9.2 percent—significantly lower than that required by a simple genetic hypothesis, which, on the basis of shared genetic material, would predict similar concordance rates for dizygotic twins and non-twin biological brothers. Furthermore, the fact that the concordance rates were similar for no twin biological brothers (9.2%) and genetically unrelated adoptive brothers (11%) is at odds with a simple genetic hypothesis, which would predict a higher concordance rate for biological siblings.⁷⁴

Bailey and Pillard themselves admit that the rate of homosexuality among no twin biological siblings, as reported by the subjects, was "significantly lower than would be predicted by a simple genetic hypothesis and other published reports."⁷⁵

The evidence actually suggests an environmental rather than a genetic cause for homosexuality, arguing that "we must at least consider the possibility that the higher concordance rate for homosexuality in dizygotic twins compared with no twin biological brothers is due to increased similarity of the trait-relevant environment in the former. This is because dizygotic twins and full biological siblings share the same

⁷² J. Michael Bailey and Richard C. Pillard, "A Genetic Study of Male Sexual Orientation," (December 1991).

⁷³ William Byne and Bruce Parsons, "Human Sexual Orientation: The Biologic Theories Reappraised," (March 1993).

⁷⁴ Ibid.

⁷⁵ J. Michael Bailey and Richard C. Pillard, "A Genetic Study of Male Sexual Orientation," (December 1991).

proportion of genetic material. Thus, any difference in the true concordance rates would be attributable to environmental rather than genetic factors."⁷⁶

Thus, the identical twin studies failed to prove the genetic causation of homosexuality.

Homosexual Gene Studies

Dean Hamer, a geneticist from the National Cancer Institute claimed to have located a genetic component to some instances of homosexuality.⁷⁷ Hamer and his colleagues recruited forty pairs of homosexual brothers who also had a high incidence of homosexual relatives on the maternal side of the family (20% of the maternal uncles and male cousins). Since women have two X and no Y chromosomes and men have one X and one Y chromosome, any genetic factor for homosexuality in this group would have to show up on the X chromosome passed on by the mother. In the case of thirty-three of these pairs (83%), the scientists claimed to have discovered a particular genetic sequence in the region of the X chromosome known as Xq28. They further concluded that one form of male homosexuality is preferentially transmitted through the maternal side and is genetically linked to chromosomal region Xq28.⁷⁸

Hamer and colleagues then conducted a second study that was published in 1995.⁷⁹ They reported that twenty-two out of thirty-two brothers (67%) shared the same genetic sequence in Xq28, albeit a 34% increase over the random 50% figure.⁸⁰ The study claimed to have

⁷⁶ Byne, William, and Bruce Parsons. "Human sexual orientation: The biologic theories reappraised." *Archives of General Psychiatry* 50.3 (1993): 228-239.

⁷⁷ D.H. Hamer, S. Hu, V.L. Magnuson, N. Hu, A.M. Pattatucci, "A Linkage between DNA Markers on the X Chromosome and Male Sexual Orientation," *Science* 261 (5119), (July 1993). pp. 321-7.

⁷⁸ Ibid.

⁷⁹ S. Hu et al., D. Hamer, "Linkage between Sexual Orientation and Chromosome Xq28 in Male but not in Females," *Nature Genetics* 11 (1995), pp. 248-256.

⁸⁰ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon, 2001.

produced evidence that one form of male homosexuality is preferentially transmitted through the maternal side and is genetically linked to chromosomal region Xq28... It appears that Xq28 contains a gene that contributes to homosexual orientation in males.⁸¹

Arguments against Homosexual Gene Studies

It is important to note what Hamer did not find in his study in order to properly determine the credibility of his theory of genetic causation of homosexuality. Hamer did not claim to have found that homosexuality is directly inherited, like eye colour. He argues: "Although the observed rates of homosexual orientation in the maternally derived uncles and male cousins of gay men were higher than in female and paternally related male relatives, they were lower than would be expected for a simple Mendelian trait."⁸²

In addition, Hamer did not claim that all cases of homosexuality could be explained by the presence of this gene marker: There were a substantial number of families in which lesbians or paternally related gay men were present. This could be explained if some instances of homosexuality were male-limited and maternally inherited whereas others were sporadic, not sex-limited, or not maternally transmitted.⁸³

In fact, Hamer did not even attempt to estimate what proportion of the instances of homosexuality could be linked to this gene marker. Hamer acknowledged that "at present, we can say nothing about the fraction of all instances of male homosexuality that are related or unrelated to the Xq28 candidate locus."⁸⁴

Furthermore, George Rice, et al., noted that:

The evidence for X linkage has been questioned on theoretical and empirical grounds. Most would agree that male homosexual orientation is not a simple Mendelian trait. There would be

⁸¹ Dean H. Hamer et al., "A Linkage between DNA Markers on the X Chromosome and Male Sexual Orientation," *Science* 261 (1993), pp. 321-327.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

strong selective pressures against such a gene. Hamer's identification of a contribution from a gene near Xq28 to homosexuality in some families that were selected for X-linked transmission of that trait might be fraught with type 1 (false positive) error. This is important to consider, given the irreproducibility of many linkage reports for complex behavioural traits.⁸⁵

Moreover, Hamer's findings have not been replicated. The 1999 study in *Science*, attempted without success to duplicate Hamer's findings. Rice says:

"Sharing of alleles at position Xq28 was studied in 52 gay male sibling pairs from Canadian families. Four markers at Xq28 were analyzed....Allele and haplotype sharing for these markers was not increased over expectation. These results do not support an X-linked gene underlying male homosexuality."⁸⁶

Rice concludes:

"It is unclear why our results are so discrepant from Hamer's original study. Because our study was larger than that of Hamer et al., we certainly had adequate power to detect a genetic effect as large as was reported in that study. Nonetheless, our data do not support the presence of a gene of large effect influencing sexual orientation at position Xq28."⁸⁷

Some scholars have also argued that if homosexuality was genetically caused it could have died out. For instance, Baron explains a key objection to "gay gene" theories. He argues that support for a genetic hypothesis is further complicated by cultural and evolutionary considerations ... Sexual patterns are to some extent a product of society's expectations, but it would be difficult to envisage a change in the prevalence of a genetic trait merely in response to changing cultural norms. Also, from an evolutionary perspective, genetically determined homosexuality would have become extinct long ago because of reduced

⁸⁵ George Rice, Carol Anderson, Neil Risch, and George Ebers, "Male Homosexuality: Absence of Linkage to Microsatellite Markers at Xq28," in *Science*, 284: 666 (April 1999).

⁸⁶ Ibid.

⁸⁷ Ibid.

reproduction. Thus, the purported linkage stands in apparent contradiction to the flimsy genetic and epidemiological evidence. A single gene or a particular genetic mechanism is unlikely to explain most of the variance in a phenomenon as complex as sexual orientation. Whether or not this sample is truly representative of familial homosexuality is an open question.⁸⁸

Conclusion

The biological theory for the genetic causation of homosexuality remains unproven. Moreover, the appeal of current biological explanations for sexual orientation may derive more from dissatisfaction with the present status of psychosocial explanations than from a substantiating body of experimental data. Critical review shows the evidence favouring a biological theory to be lacking. In an alternative model, temperamental and personality traits interact with the familial and social milieu as the individual's sexuality emerges. Because such traits may be heritable or developmentally influenced by hormones, the model predicts an apparent nonzero heritability for homosexuality without requiring that either genes or hormones directly influence sexual orientation per se.⁸⁹ A theoretical rationale for a direct path between the genotype and sexual orientation has not even been clearly articulated, let alone established.⁹⁰

Thus, President Yoweri Museveni of Uganda challenged the scientific community to provide scientific evidence that homosexuality is genetically caused before signing a controversial anti-gay bill into law. The bill was passed on 20th December 2013. Museveni backed the bill after

⁸⁸ Miron Baron, "Genetic Linkage and Male Homosexual Orientation," *BMJ*, 307:337 (7.8.1993).

⁸⁹ William Byne and Bruce Parsons, "Human Sexual Orientation: The Biologic Theories Reappraised," *Archives of General Psychiatry*, 50 (March 1993): 236.

⁹⁰ Daryl J. Bem, "Exotic Becomes Erotic: A Developmental Theory of Sexual Orientation," *Psychological Review*, 103 (2) (1996), pp. 328–29.

getting advice from a team of Ugandan scientists whose report recommended that there is no genetic basis for homosexuality.⁹¹

Having presented the nature theories for the causation of homosexuality, I will now present the nurture or developmental theories of homosexuality.

Nurture or Developmental Theories of the Causes of Homosexuality

Proponents of nurture or developmental theories argue that homosexual orientation develops primarily as a result of upbringing, experience and the social-environmental factors.

In 1973 the American Psychiatric Association (APA) removed homosexuality from its list of mental disorders. That decision did not come as a result of new research. A furious egalitarianism that challenged every instance of authority had compelled psychiatric experts to negotiate the pathological status of homosexuality with homosexuals themselves. The result was not a conclusion based on an approximation of the scientific truth as dictated by reason but was instead an action demanded by the ideological temper of the times."⁹² In other words, APA's decision to declassify homosexuality as a mental disorder was based on political rather than scientific reasons.

Prior to 1973 an extensive literature existed on the role of upbringing and experience in the development of homosexuality. Yet one of the unfortunate effects of the APA decision was to largely suppress further research on the psychological origins of homosexuality.⁹³

The Developmental Causation of Homosexuality

Several scholars have contributed to the body of research arguing for the developmental cause of homosexuality. For instance, Ralph H.

⁹¹ "Yoweri Museveni Approves Controversial Law despite International Outcry", *Aljazeera*, (24.2.2014).

⁹² Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis*, Princeton, NJ: Princeton University Press, 1987.

⁹³ www.frc.org, EF/EF08L4/ (12.3.2014).

Gundlach found a remarkable number of conditions and circumstances that may result in homosexuality. He argues that what happens after the child is born is complicated by many factors; there are not only inner biological and emotional factors, parental and familial surroundings, social and cultural circumstances; but the various pressures and expectations shift as the child grows and hardens as he establishes his ways into his eventual adult character structure.⁹⁴

Early Childhood Development

The stage for future sexual orientation may be set by experiences during early development, perhaps during the first four years of life. The inadequacies of present psychosocial explanations do not justify turning to biology by default—especially when, at present, the biological alternatives seem to have no greater explanatory value. In fact, the current trend may be to underrate the explanatory power of extant psychosocial models."⁹⁵

Ralph R. Greenson, a clinical professor of psychiatry at the *University of California Los Angeles* (UCLA), offered the following developmental theory, which focuses on the need of boys to "dis-identify" from their mother:

The male child, in order to attain a healthy sense of maleness, must replace the primary object of his identification, the mother, and must identify instead with the father. I believe it is the difficulties inherent in this additional step of development, from which girls are exempted, which are responsible for certain special problems in the man's gender identity, his sense of belonging to the male sex...The male child's ability to dis-identify

⁹⁴ Ralph H. Gundlach, "Childhood Parental Relationships and the Establishment of Gender Roles of Homosexuals," *Journal of Consulting and Clinical Psychology*, 33 (April 1969), p. 137.

⁹⁵ William Byne and Bruce Parsons, "Human Sexual Orientation: The Biologic Theories Reappraised," *Archives of General Psychiatry*, 50 (March 1993), p. 236.

will determine the success or failure of his later identification with his father.⁹⁶

Irving Bieber headed a team of researchers on a study of the etiology of homosexuality in the 1960s. A summary of their findings reveals that the classical homosexual triangular pattern is one where the mother is a Close-Binding-Intimate (CBI) with the son and is dominant and minimizing toward a husband, who is a detached father, particularly a hostile-detached one. From our statistical analysis, the chances appear to be high that any son exposed to this parental combination will become homosexual or develop severe homosexual problems.⁹⁷

Evelyn Hooker criticized Bieber's work because it involved subjects who were undergoing psychiatric treatment and thus the results are presumably not applicable to the broader population of homosexuals.⁹⁸

Psychological Maladaptation

Homosexuality is a psychological maladaptation, a failure in some sense or other to reach psychosocial maturity. They consider homosexuality to be a therapeutically changeable subdivision of neurosis. Thus, there is no healthy homosexual. The entire personality structure of the homosexual is pervaded by the unconscious wish to suffer. This wish is gratified by self-created trouble making. This 'injustice collecting' (technically called psychic masochism) is conveniently deposited in the external difficulties confronting the homosexual.⁹⁹ In this view, homosexuals are very sick people trying to claim that they are well.

Homosexuality is also characterized as a disorder of adaptation, the result of hidden but incapacitating fears of the opposite sex, since the

⁹⁶ Ralph R. Greenson, "Dis-Identifying from Mother: It's Special Importance for the Boy," *International Journal of Psychoanalysis*, 49 (1968), p. 370.

⁹⁷ Irving Bieber et al., *Homosexuality: A Psychoanalytical Study*, New York: Vintage Books, 1962.

⁹⁸ Evelyn Hooker, "Parental Relations and Male Homosexuality in Patient and Non-patient Samples," *Journal of Consulting and Clinical Psychology*, 33 (April 1969), p. 140.

⁹⁹ E. Bergler, *Homosexuality: Disease or Way of Life?* New York: Macmillan, 1967.

condition is basically an accommodation to unrealistic fears, if it is necessarily pathological.¹⁰⁰

However, it should be observed that in 1973, the weight of empirical data, coupled with changing social norms and the development of a politically active gay community in the United States, led the Board of Directors of the American Psychiatric Association to remove homosexuality from the Diagnostic and Statistical Manual of Mental Disorders (DSM).¹⁰¹

Child Sexual Abuse

A study of the past sexual experiences, sexual thoughts, and fantasies regarding sexual contacts of 35 adult men who were sexually abused during their childhoods found that among men, a history of homosexual child abuse was linked both to an adult homosexual orientation and to sexual attraction to children.¹⁰² The study established that:

According to existing literature, gender identity confusion and gender preference are often cited as being affected by childhood sexual abuse. In this study, 46 percent of the abused men, as opposed to 12 percent of the non-abused men, defined their sexual orientation as either bisexual or homosexual. Therefore, these findings further validate previous research regarding the sexual orientation of children who have been sexually abused.¹⁰³

There are a number of factors that occur in childhood which appear to be related to the development of homosexuality in adults. Such conditions as prolonged segregation of the sexes; specific, intensely exciting, and gratifying homosexual experiences in childhood; seduction

¹⁰⁰ Irving Bieber, *Homosexuality: A Psychoanalytic Study*, New York: Basic Books, 1962.

¹⁰¹ American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders (DSM-5®). *American Psychiatric Pub*, (7.5.2016).

¹⁰² James R. Bramblett, Jr., and Carol Anderson Darling, "Sexual Contacts: Experiences, Thoughts, and Fantasies of Adult Male Survivors of Child Sexual Abuse," *Journal of Sex & Marital Therapy*, 23 (4): 313 (Winter 1997).

¹⁰³ *Ibid.*

by adult homosexuals; threatening and painful experiences in connection with sex play or relationships with the opposite sex. These and related factors in childhood and adolescence are correlated with the occurrence of homosexuality in adulthood.¹⁰⁴

Arguments against Child Sexual Abuse as a Cause of Homosexuality

The American Psychiatric Association stated that no specific psychosocial or family dynamic cause for homosexuality has been identified, including histories of childhood sexual abuse. Sexual abuse does not appear to be more prevalent in children who grow up to identify as gay, lesbian, or bisexual, than in children who identify as heterosexual.¹⁰⁵

Moreover, the National Organization on Male Sexual Victimization (NOMSV) argued that, while there are different theories about how the sexual orientation develops, experts in the human sexuality field do not believe that premature sexual experiences play a significant role in late adolescent or adult sexual orientation. Thus, the assertion that many boys who have been abused by males erroneously believe that something about them sexually attracts males, and that this may mean they are homosexual or effeminate, is not true. Paedophiles who are attracted to boys will admit that the lack of body hair and adult sexual features turns them on. The paedophile's inability to develop and maintain a healthy adult sexual relationship is the problem - not the physical features of a sexually immature boy.¹⁰⁶

The Role of Personal Choice as a Cause of Homosexuality

Debates over homosexuality are often presented in terms of a dichotomy—either a person is "born gay," or a person "chooses to be gay." If the nature versus nurture debate appears inconclusive, an even more difficult feat is to determine the amount of conscious participation a person exerts in becoming a homosexual. Shafer suggests that a

¹⁰⁴ Daniel G. Brown, "Sex-role Preference in Young Children," *Psychological Monographs: General and Applied* 70.14 (1956):1.

¹⁰⁵ APA, "Gay, Lesbian and Bisexual Issues," May 2000 (7.7.2015).

¹⁰⁶ www.MaleSurvivor.org, (7.7.2015).

person is not conscious of the psychosocial factors which shape his/her sexual orientation. These processes, it is claimed, begin at such an early stage that in essence sexual orientation cannot be said to be chosen.¹⁰⁷

Choice plays a very important role in the development of one's sexual orientation. Conspicuously absent from most theorizing on the origins of sexual orientation is an active role of the individual in constructing his or her identity.¹⁰⁸ However, this is not meant to imply that one consciously decides one's sexual orientation. Instead, sexual orientation is assumed to be shaped and reshaped by a cascade of choices made in the context of changing circumstances in one's life and enormous social and cultural pressures.

Given the existence of ex-homosexuals and given the existence of human cultures where homosexuality has apparently not existed, the position that homosexuality is ultimately a choice in individuals or at the very least can be a choice in individuals has strong evidential support.¹⁰⁹

Arguments against the Role of Personal Choice as a Cause of Homosexuality

Proponents of the homosexual agenda often claim that homosexuality is unchangeable and has a genetic basis as discussed above.¹¹⁰ However, this does not prove that homosexuals do not choose to behave this way. By definition, a consenting relationship, whether homosexual or not must be made by choice, even if there is a latent homosexual desire.¹¹¹

¹⁰⁷ B.E. Shafer and J.F. Harvey, *Pastoral Responses to Gay World Questions, "Is Gay Good?" Ethics, Ethology and Homosexuality*, New York: Julian Press, 1966.

¹⁰⁸ William Byne and Bruce Parsons, "Human Sexual Orientation: The Biologic Theories Reappraised," *Archives of General Psychiatry*, 50 (March 1993), p. 236.

¹⁰⁹ Cynthia Nixon: Gay by Choice? abcnews.go.com/blots/entertainment/2012/01/15.2.2016.

¹¹⁰ www.cnsnews.com/public/content/article.aspx?rscid=4365, (15.2.2016).

¹¹¹ John Pavlovitz, "Yes, Homosexuality is absolutely a Choice," www.huffingtonpost.com/john-pavlovits/yes-homosexuality-abs. (7.5.2016).

Sexual Orientation Change

Sexual orientation change efforts (SOCE) are methods that aim to change sexual orientation, used to try to convert homosexual and bisexual people to heterosexuality.¹¹² Examples of SOCE methods are: behavioural techniques, cognitive behavioural techniques, psychoanalytic techniques, medical approaches, religious and spiritual approaches,¹¹³ and, in some parts of the world, acts of sexual violence called "corrective rape."¹¹⁴

Reparative Therapy

Reparative therapy is a term describing a counselling approach to sexual reorientation.¹¹⁵ The therapy attempts to re-direct the reparative drive toward healthy nonsexual relationships with same sex peers via the therapist, group counselling, and support groups. A major aspect of this effort is to generate or support gender identification. That is, men are encouraged to develop a solid sense of masculinity and women are encouraged to become more feminine. The belief is that if people have a solid sense of gender identification, then they will experience sexual attractions consistent with heterosexuality. For instance, if a woman who has identified as a lesbian develops a solid sense of herself as a feminine woman, she will begin to find the opposite sex attractive.¹¹⁶

Reparative therapy proponents argue that psychoanalysts and other therapists have been reporting beneficial results for homosexuals who have sought such change. Jones and Yarhouse provide tables which list the results of treating homosexual patients from 14 individual

¹¹² James Phelan and Christopher Doyle. "Sexual Orientation Change Efforts (SOCE)." (2014).

¹¹³ "Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation" www.webarchive.org, (15.2.2016)..

¹¹⁴ Roderick Brown, "Corrective Rape in South Africa: A Continuing Plight despite an International Human Rights Response," *Ann. Surv. Int'l & Comp. L.* 18 (2012): 45.

¹¹⁵ Elizabeth Moberly, *Homosexuality: A New Christian Ethics*, Cambridge: Lutterworth, 2006.

¹¹⁶ www.drthrockmorton.com/article.asp?id=4 , (9.7.2015).

therapists (1950s-1990s) and from group treatments (1950s-1970). Tallying up the numbers, positive outcomes (defined as considerable to complete change) were reported for 623 of 2161 patients (28.8%). Moreover, most psychotherapists will allow that in the treatment of any condition, a 30% success rate may be anticipated.¹¹⁷

Advocates of reparative therapy have identified three main problems with the arguments raised by the critics of sexual orientation change. First, their reasoning is dogmatic based primarily on ideological conviction rather than evidence. The greatest fear of the homosexual lobby is that some true homosexuals might change in sexual orientation; as such a change could instigate an intellectual challenge to their fundamental premise that homosexual orientation is immutable.¹¹⁸

The second problem with such a claim is that it applies a stricter definition of change to sexual orientation than would be applied to various other conditions which have a partial genetic, hormonal, or biological component. It is surely unrealistic to demand that a person who comes out of a homosexual lifestyle and into a heterosexual one never again, under even the most stressful circumstances, experience homosexual urges if she or he is to claim a sexual orientation change. An acceptable standard of cure in other conditions is not the removal of every last vestige of temptation, but rather the ability to successfully manage such temptations.¹¹⁹ This supports the argument for the role of personal choice as a cause of homosexuality which was discussed above.

A third problem with the contention that changing true homosexuals is impossible is that the position is completely impractical. Even if there were such a category as a true homosexual, someone who not only exhibits exclusive homosexual behaviour and feelings at any given period of time, but also can never change under any circumstances, how would society be able to distinguish a true homosexual from a bisexual or heterosexual who is acting like a true homosexual? The answer is

¹¹⁷ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

clear: society could not make the distinction, at least not apart from active attempts at changing homosexuals into heterosexuals.¹²⁰

If there is no research on the longitudinal stability of sexual orientation over the adult life span, how can professional associations be certain that sexual orientation cannot change? Even if one accepts the presumption that sexual orientation cannot be changed, how does one know that a client's sexual orientation is settled? Without a more certain way to objectively determine sexual orientation, perhaps we should place considerable weight on the self-assessment of clients. Clients who want to change cannot reliably be told that they cannot change, since we cannot say that they have settled on a fixed trait.¹²¹ This further supports the argument for the role of personal choice as a cause of homosexuality which was discussed above.

However, advocates of homosexual behaviour have objected to the use of reparative therapy in changing sexual orientation. Their assumption is that homosexuality is an immutable condition; that people who identify themselves as homosexual are locked into a lifelong condition. However, evidence points to the fact that change is possible for homosexuals. Of course, change can take different forms: a reduction or elimination of homosexual behaviour, a reduction in the intensity and frequency of homosexual impulses, the experience of heterosexual arousal and marriage, or reorientation from exclusive or predominant homosexuality to exclusive or predominant heterosexuality.¹²²

Positional statements by major mental health organizations in the US state that there is no scientific evidence that a homosexual orientation can be changed by reparative therapy. Also, any attempts to change an individual's sexual orientation are harmful to lesbian, gay, bisexual and

¹²⁰ Ibid.

¹²¹ Warren Throckmorton, "Attempts to Modify Sexual Orientation: A Review of Outcome Literature and Ethical Issues," *Journal of Mental Health Counselling* 20 (Oct. 1998), pp. 283-304.

¹²² Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

transgender (LGBT) people.¹²³ The promotion of reparative therapy goes beyond its obvious market of disaffected lesbian, gay and bisexual people. This campaign attempts to influence public opinion and justify anti-gay discrimination by inaccurately portraying homosexuality as a mental disorder and a social evil. Reparative therapy, then, is more than just a clinical issue. It figures prominently in the national debate over lesbian and gay civil rights.¹²⁴

Advocates of homosexual behaviour discredit reparative therapy for five reasons. Firstly, reparative therapy is based on faulty theoretical foundations. Psychology and psychiatry have no precedents for treating conditions that are not considered to be illnesses. Since 1973 homosexuality has been considered a normal variation of human sexuality. Proponents of conversion therapy disregard this view because of their mistaken belief that homosexuality was declassified as a mental illness only after lobbying from gay activists. The truth, however, rests in the science, or lack thereof, of the "mental illness" assumption of homosexuality.¹²⁵

Homosexuality itself became a mental health diagnosis only as a reflection of prevailing social prejudice. This assumption was first questioned by Evelyn Hooker,¹²⁶ who compared matched groups of homosexually and heterosexually-identified men. She found that scores from psychological tests of the two groups were indistinguishable from one another. Since then, a substantial scientific literature has found no

¹²³ American Academy of Child Adolescent Psychiatry, American Academy of Paediatrics, American Association for Marriage and Family Therapy, American College of Physicians, American Counselling Association, American Medical Association, American Psychiatric Association, American Psychoanalytic Association, American Psychological Association, American School Counsellor Association, American School Health Association, etc.

¹²⁴ Douglas C. Haldeman, "The Pseudo-Science of Sexual Orientation Conversion Therapy," *Angles, Institute for Gay and Lesbian Strategic Studies*, December 1999, Vol 4. No 1.

¹²⁵ Ibid.

¹²⁶ Evelyn Hooker, "The Adjustment of the Male Overt Homosexual," *Journal of Projective Technique*, Vol. 21, 1957.

significant differences between homosexual and heterosexual subjects on measures of overall psychological functioning and mental and emotional well-being. The most comprehensive review of such studies was conducted by Gonsiorek, who also carefully analyzed studies purporting to demonstrate that homosexuality is a mental illness and found them to be rife with methodological problems.¹²⁷

Secondly, homophobia influences some LGBTI people to seek sexual orientation change. Most reparative therapists incorrectly assume that their clients are motivated by intrinsic negative factors associated with homosexuality, thereby, ignoring the influence of social pressure, which is likely a central factor in individuals' attempts to change their sexual orientation.¹²⁸

Thirdly, the response of mainstream mental health organizations to the claims advanced by reparative therapists. Historically, most reparative therapy occurred in religious settings, so it was not necessary for mental health groups to comment on the practice. That changed with the emergence of the National Association for Research and Therapy of Homosexuality (NARTH) in the early 1990s.¹²⁹ NARTH disseminates material that promotes discredited stereotypes and portrays all lesbian, gay and bisexual people as troubled. Mainstream mental health organizations in the United States have responded to this challenge.¹³⁰ For instance, the American Psychological Association (APA) adopted a policy in 1997, admonishing all practitioners who deal with lesbian, gay and bisexual clients to refrain from discriminatory practices and from making unscientific claims about their treatments. Therapists must also

¹²⁷ J. Gonsiorek, "The Empirical Basis for the Demise of the Illness Model of Homosexuality." In J. Gonsiorek and J. Weinrich (eds.), *Homosexuality: Research Issues for Public Policy*, Newbury Park, CA: Sage Publications, 1991.

¹²⁸ D. Haldeman, "The Practice and Ethics of Sexual Orientation Conversion Therapy," *Journal of Consulting and Clinical Psychology*, Vol. 62, 1994.

¹²⁹ G. Davison, "Constructionism and Morality in Therapy for Homosexuality." In J. Gonsiorek and J. Weinrich (eds.), *Homosexuality: Research Issues for Public Policy*, Newbury Park, CA: Sage Publications, 1991.

¹³⁰ D. Haldeman, "The Practice and Ethics of Sexual Orientation Conversion Therapy," *Journal of Consulting and Clinical Psychology*, Vol. 62, 1994.

provide the client with information about the treatment, alternatives, and reasonable outcome expectations. Further, the policy affirms the Association's commitment to the "dissemination of accurate information about sexual orientation," and "opposes portrayals of lesbian/gay/bisexual adults and youth as mentally ill."¹³¹

Fourthly, the harm caused by conversion or reparative therapy. Proponents of reparative therapy allege that a typical success rate for conversion therapies is about 30%. Surprisingly, those researchers never question what might have happened to the other 70%. The only comment that conversion therapists offer is that sexual orientation is difficult to change. All conversion therapy rests solidly on the assumption that homosexuality is in conflict with a fulfilling life, balancing out any risks from treatment in the eyes of those therapists. However, it is important to ask if these treatments might result in negative consequences.¹³²

Reparative therapy treatments like electric shock or drugs inducing vomiting while homoerotic material is presented are likely to cause harm. Also, individuals who have failed in reparative therapy experience continued depression over their homosexuality, compounded with a sense of shame over having failed at conversion therapy. Further, they may have a psychologically debilitating sense of having lost those important life elements—family of origin, religious affiliation, and social support—for which there was still some hope as long as the individual was trying to change. Some former conversion therapy clients report extraordinary difficulties with interpersonal interactions, and particularly sexual intimacy, with same-sex partners.¹³³

Fifthly, reparative therapy has dangerous social implications. The recent conversion therapy advertising campaign and the practice of conversion

¹³¹ American Psychological Association, "Appropriate Therapeutic Responses to Sexual Orientation," Proceedings for the Legislative Year 1997, *American Psychologist*, Vol. 53, 1998.

¹³² D. Haldeman, "The Practice and Ethics of Sexual Orientation Conversion Therapy," *Journal of Consulting and Clinical Psychology*, Vol. 62, 1994.

¹³³ "The Practice and Ethics of Sexual Orientation Conversion Therapy," *Journal of Consulting and Clinical Psychology*, Vol. 62, 1994.

therapy are prime pathways for devaluing lesbian, gay, and bisexual people and reinforcing stigma. Inaccurate information encourages prejudice and discrimination. Evidence suggests that antigay attitudes, fuelled by misinformation and cultural sanction, may greatly influence the behaviour of those predisposed to abuse lesbian, gay, bisexual, and transgender individuals.¹³⁴ Therefore, real reparative therapy involves helping failures of conversion therapy reconstruct their sense of identity and rediscover their capacity to love, as well as repairing a society still affected by the myth that lesbian, gay, and bisexual people are mentally ill.¹³⁵

Conclusion

In view of the above discussion, I agree with the Christian conservative view that argues that sexual orientation change is possible through the grace of God and the power of the Holy Spirit. The Christian faith entails a strong belief in the power of the Holy Spirit to change the lives of those who submit themselves to the lordship of Jesus Christ. However, change should be understood as a progressive process rather than an instant radical turnaround from a homosexual to a heterosexual orientation. Patterns of sexual arousal embedded in the brain are not easily removed. Therefore, patience is needed when dealing with people who are struggling with homosexuality.

Natural Law Morality and Homosexuality

Homosexuality is considered as unnatural because it violates the laws of nature.¹³⁶ However, there seems to be a problem as to whether homosexuality is contrary to natural law, or that it is in conformity with

¹³⁴ G. Haddock, M Zanna, "Authoritarianism, Values, and the Favorability and Structure of Antigay Attitudes" In G. Herek (Ed.), *Stigma and Sexual Orientation: Understanding Prejudice against Lesbians, Gay Men and Bisexuals*, Thousand Oaks, CA: Sage Publications, 1998.

¹³⁵ D. Haldeman, "The Practice and Ethics of Sexual Orientation Conversion Therapy," *Journal of Consulting and Clinical Psychology*, Vol. 62, 1994.

¹³⁶ John Finnis, "Law, Morality, and Sexual Orientation," *Notre Dame JL Ethics & Pub. Pol'y* 9 (1995), p. 11.

the laws of nature. Many argue that it is against nature, but there seem to be no obvious reasons to believe so. This section will adopt arguments that evaluate the practice of homosexuality using the natural law position with regards to human sexuality. The argument proffered in this section, thus, is that homosexual acts go against the natural moral law. As human beings we must respect the laws inherent in nature, and work with nature and not against it. We still need to see that our sexuality too is such a natural environment whose inherent laws we have to respect. This argument should be taken in the light of certain unnatural practices that are peculiar to sexuality like homosexuality.¹³⁷

The Classical Natural Law Theory

The natural law theory of morality has existed in both classical and Thomistic forms. In its classical form, moral laws are conceived as varying from nation to nation and are viewed as positive laws, that is, as laws prescribed by legislative authorities. Hence, they are mere artefacts of society and conventions which are not really binding. This conventionalist view, an early cultural relativism, was opposed from the time of Plato¹³⁸ and Aristotle¹³⁹ to Cicero¹⁴⁰ and beyond. For them, morality is natural not conventional, because there is a natural law that must be obeyed whether it is written down by legislative authorities or not.¹⁴¹

The classical view of the natural law theory of morality implies that moral principles are valid relative to a particular individual or society.

¹³⁷ Stanslaus Muyebe and Alexander Muyebe, *The African Bishops on Human Rights: A Resource Book*, Paulines Publications Africa, 2001.

¹³⁸ John Wild, *Plato's Modern Enemies and the Theory of Natural Law*, Chicago: University of Chicago Press, 1953.

¹³⁹ Max Solomon Shellens, "Aristotle on Natural Law," *Natural Law Forum* 4 (1) (1959), pp. 72–100.

¹⁴⁰ Francis Barham, "Introduction" *The Political Works of Marcus Tullius Cicero*, London: Edmund Spettigue, 1842.

¹⁴¹ T. Holt, 'Philosophy of Religion: Natural Law Theory,' www.philosophyofreligion.info/christian-ethics/natural-law-theory, (21.12.2015).

To this end, same sex marriage will be viewed as morally acceptable relative to the individual who engages in such practice or relative to the group of people who are homosexuals.¹⁴² Therefore, actions are considered right relative to different standards since there are no objective standards through which actions can be assessed going by this classical view.¹⁴³

The Thomistic Natural Law Theory

On the Thomistic account, "natural law theory is a theory about the relationship between morality and human nature, the theory that who we are determines how we ought to act. There is a way of living that is in accordance with human nature. It holds that morality prescribes that we live such a life which is consistent with the human nature."¹⁴⁴ Aquinas understood human nature to be defined by reason and freedom; "it is our ability to reason and to make our own free choices, after all, that sets us apart from animals. Whereas material objects and animals without free will do by nature, deterministically, as God wills them to do, we who have free will may choose either to play our part in God's plan or not. Reason can tell us what this part is; our purpose is discoverable. With freedom comes responsibility to do as we were made to do."¹⁴⁵ Whatever is contrary to reason is unnatural and therefore immoral. It is on the basis of this that Aquinas has condemned homosexual practices as special sins which are contrary to nature. Homosexual intercourse is contrary to the natural law of heterosexual

¹⁴² M.E. Winston, *The Philosophy of Human Rights*, Belmont: Wadsworth, 1989.

¹⁴³ I. Kant, *Groundwork of the Metaphysic of Morals*, London: Routledge, 1993. From a Kantian point of view, a rule can be universal if it passes the test of the reciprocity principle, viz. if the person who adopts the rule as a maxim for his/her action is willing to be treated by others according to the same rule.

¹⁴⁴ "Summa Theologica, I-II, Q. 91, Art. 2, 'I answer that'" www.newadvent.org, (14.12.2015).

¹⁴⁵ T. Holt, 'Philosophy of Religion: Natural Law Theory'. www.philosophyofreligion.info/christian-ethics/natural-law-theory, (21.12.2015).

intercourse; thus, it has received the special name of the "unnatural vice."¹⁴⁶

Contrariwise, one may want to argue based on the Thomistic account that, if human nature is truly defined by reason and freedom, then homosexual acts are actions that consenting individuals of the same sex who are also rational have voluntarily agreed to partake. In this sense, their actions will not be considered contrary to nature because they are acting in accordance with what, in their own view, human nature defines. They may argue that since reason sets the path to follow and that it is only left to them to discover that path, they have chosen to tread the path of being a homosexual which for them is what reason dictates. They may further argue that based on their own understanding and interpretation of the concept of "the inherent nature of an organism or organisms of the same species acting in accordance with what nature defines," as human beings, it inheres in their nature either as an individual or as a group to be attracted to each other.¹⁴⁷ This is one of the problems of the Thomistic account of the natural law theory of morality.¹⁴⁸ Porter elucidates that it goes beyond this. There is therefore need to provide a more convincing account of the idea of "the inherent nature of human beings" so that it will be easier to specify actions that are condemned because they are contrary to the nature of human beings.¹⁴⁹ In order to avoid the double standard conclusion arrived at by the classical account and to foster a better understanding and interpretation of the idea of "the inherent nature of human beings," a Thomistic

¹⁴⁶ W. Baumgarth, S.J Regan, (eds.), *St. Thomas Aquinas on Law, Morality and Politics*, Indianapolis, IN: Hackett, 1988.

¹⁴⁷ E. Barcalow, *Moral Philosophy: Theory and Issues*, California: Wadsworth, 1994.

¹⁴⁸ Joseph Pilsner, *The Specification of Human Actions in St. Thomas Aquinas*, Oxford University Press, 2006.

¹⁴⁹ Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law*, Grand Rapids, MI: Eerdmans, 2005.

approach to the natural law theory of morality is employed for the purpose of this study.¹⁵⁰

Central to the Thomistic approach is the claim that what is consistent with moral laws of nature is right and what is not in keeping with these laws is wrong.¹⁵¹ Human beings have reasoning faculties and the Laws of Nature are discernable by human reason. Thus, humans are morally obliged to use their reasoning faculties to discern what the laws are and then to act in conformity with them. Human beings have a natural drive to eat, drink, sleep and procreate. These actions are in accordance with a natural law for species survival and procreation. But while activities in conformity with such laws are morally good, those that work contrary to them are morally wrong.¹⁵² The natural law theory of morality derives from a rational deduction of what would be consistent with what appears to reason to be the laws of nature governing human behaviour. What are the laws of nature that provide guidance for human actions? These include the law of survival, the natural action for living things to maintain themselves and to reproduce, and so on.¹⁵³

For Aquinas, sexuality that was within the bounds of marriage and which helped to further what he saw as the distinctive goods of marriage, mainly love, companionship, and legitimate offspring, was morally permissible, and even good. According to this perspective, heterosexual marriage is an important good in a very particular way, since it puts procreation at the center of marriage as its "natural fulfillment."¹⁵⁴ This is why there seems to be a contradiction in engaging in a marriage that is not heterosexual, and hence unproductive. Following

¹⁵⁰ John Goyette, Mark S. Latkovic, Richard S. Meyers, *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, Washington D.C.: Catholic University of America Press, 2004.

¹⁵¹ Tony Burns, "Aquinas's Two Doctrines of Natural Law," *Political Studies* 48 (5) (2000), pp. 929–946.

¹⁵² Stanley Parry (ed.), *Thomas Aquinas, Treatise on Law* (Summa Theologica, Questions 90–97), and Chicago: Henry Regnery Company, 1969.

¹⁵³ www.qcc.cuny.edu/socialsciences/ppecorino/ethics/naturallaw_theory.htm, (10.12.2015).

¹⁵⁴ R. P. George, *In Defence of Natural Law*, New York: Oxford University Press, 1999.

this perspective, it is reasonable to assert the position that all acts of sex that are not tailored for procreation are unnatural, hence homosexuality is such an act that cannot go towards procreation of offspring, hence it is unnatural.¹⁵⁵

The natural law theory of morality is significant for the homosexuality debate. Four reasons have been given for the usefulness of the natural law theory of morality in many ethical dilemmas. First, natural law ethical theory aids in understanding which human actions are morally right or wrong through the aid of human reason alone without making reference to divine revelation. Second, natural law ethical theory is objectively grounded in what one can describe as our objectively knowable human nature;¹⁵⁶ that is, in what is really good or bad for us as human beings, as individuals and as members of human communities.¹⁵⁷ Third, the natural law theory of morality is not deduced from non-empirically derived and questionable philosophical premises or religious dogmas, or from variable emotions or personal opinions. For example, it is wrong to use cocaine because our human natures are such that cocaine seriously harms, sometimes even destroys the body, mind and spirit. It can also seriously harm others close to us as well as our human society at large. That is just the way we human beings are made; and we can know this fact objectively and empirically.¹⁵⁸ Fourth, because the basic assumptions of natural law theory are proximately grounded on an objectively knowable human nature, they are applicable to all human beings, precisely because we all possess such human nature. The possession of natures which are specifically human is precisely what we all have in common. This is true regardless of time, culture, background, race, sex, religion or political affiliation.¹⁵⁹

¹⁵⁵ Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance*, Vol 3, No. 3.3 Quarter III 2012.

¹⁵⁶ www.ncbi.nlm.nih.gov/pubmed/12199284 (21.12.2015).

¹⁵⁷ A. Fagothey, *Right and Reason*, St. Louis: The C.V. Mosby Company, 1963.

¹⁵⁸ www.qcc.cuny.edu/socialsciences/ppecorino/ethics/naturallawtheory.htm, (10.12.2015).

¹⁵⁹ Ibid.

If properly understood and applied, natural law theory should be ideal for our pluralistic society since, presumably, we are human beings and that holds at least in common for all. What is fundamentally good or bad for human beings in general will hold for everybody. Although secondary differences must be taken into consideration, the primary precept of the natural law will be the same for everybody by virtue of their common humanity, and these precepts cannot be changed because our human nature and what is objectively and fundamentally good or bad for us cannot change.¹⁶⁰

Implications of the Natural Law Theory on the Homosexuality Debate

How do the above observations have a bearing on the homosexual debate? It is a law of nature to procreate, and at the same time it is "out of the ordinary" to be attracted to persons of similar sexual orientation.¹⁶¹ The basic assumption of this unnaturalness argument is that the sole purpose of any sexual practice should be the procreation of species; otherwise any sexual practice outside this simply defeats its essence. Fertility in general, acts as a universally contested and essential virtue that is given a special position in any marriage set-up regardless of differences that exist among people. For instance, in traditional African societies, the peoples' ability to control and go against nature was limited, but wherever they thought they could influence it in order to increase fertility, they could do so in order to give marriage some form of dignity, spine and stability.¹⁶² The importance of the procreative sexual act is acknowledged by Mbiti who says that:

For Africans marriage is the focus for existence. It is the point where all the members of a given community meet: the departed, the living and those yet to be born. Marriage and procreation are a unity; without procreation marriage is

¹⁶⁰ Ibid.

¹⁶¹ K. Boykin, "Homosexuality in Africa" www.keithboykin.com/author/africa.html, 2001, (14.12.2015).

¹⁶² Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance*, Vol 3, No. 3.3 Quarter III 2012.

incomplete. A person with no descendants in effect quenches the fire of life.¹⁶³

However, some scholars have argued that what is uncommon may not necessarily be unnatural. In as much as homosexual behaviour may not be common, it does not necessarily mean that it is unnatural.¹⁶⁴ The argument for the alleged unnaturalness of homosexuality by mostly theologians and moralists does not necessarily hold water. There is a sense in which human sexuality may vary with time, place and context hence the need, sometimes, to have a relativist approach to sexuality if in any way humanity is to tolerate homosexuality.¹⁶⁵ Also, understandings of sexuality can vary across time and space, in an attempt to argue for the permissibility of homosexuality.¹⁶⁶

One weakness of the arguments for unnaturalness of homosexuality is the ambiguity of the terms "natural" and "unnatural." There is a problem as to whether "unnatural" means contrary to the "laws of human nature" or whether it means "uncommon." If it means the former, then, it is not possible to have a practice that goes against the law of nature simply because nature takes care of its laws like the laws of gravity. If properly understood, natural law differs from human positive law in that it is purely descriptive.¹⁶⁷ For example, it is a law of nature that under normal circumstances, water boils at one hundred degrees Celsius. When taken in this light, thus, it is not possible to violate this rule that water boils if it reaches one hundred degrees Celsius because it is a law of nature which is purely descriptive, unlike human positive law which is prescriptive. Thus, in the light of this argument, therefore,

¹⁶³ John S. Mbiti, *African Religions and Philosophy*, London: Heinemann, 1969.

¹⁶⁴ Shamnad Basheer, Sroyon Mukherjee and Karthy Nair, "Section 377 and the 'Order of Nature': Nurturing 'Indeterminacy' in the Law? *Nujs Law Review* 2 *Nujs L. Rev* 433 (2009).

¹⁶⁵ B. M. Leiser, "Homosexuality and the 'Unnaturalness Argument'", in Velasquez, M. and Rostenkowski, C., *Ethics: Theory and Practice*, New Jersey: Prentice Hall, 1985.

¹⁶⁶ Michael Foucault, *The History of Sexuality*. Vol One: *An Introduction*, Translated by Robert Hurley, New York: Vintage Books, 1980.

¹⁶⁷ B.M. Leiser, "Homosexuality and the 'Unnaturalness Argument'", in Velasquez, M. and Rostenkowski, C. (Eds.), *Ethics: Theory and Practice*, New Jersey: Prentice Hall, 1985.

it may be very difficult to look at homosexual practices as unnatural because if there was a sexual practice that is natural, human beings could not change them.¹⁶⁸ In pursuit of this argument, the following questions can be asked:

When theologians and moralists speak of homosexuality, contraception, abortion, and other forms of human behaviour as being unnatural, and say that for that reason such behaviour must be considered to be wrong, in what sense are they using the word unnatural? Are they saying that homosexual behaviour and the use of contraceptives are contrary to the scientific laws of nature, are they saying that they are artificial forms of behaviour or are they using the terms natural and unnatural in some third sense?¹⁶⁹

If the word "*unnatural*" is to mean that which is uncommon, then it is problematic since there are several types of uncommon and out of the ordinary behaviours such as being clever, witty, beautiful, genius and so on that are highly desirable rather than unnatural. Also, there are many sexual acts that are done in normal heterosexual relations as various forms of accepted and recommended sex plays which would be "*unnatural*" or uncommon or out of the ordinary, yet they are said to be normal in common usage.¹⁷⁰

I am of the view that perhaps it may be helpful to first ask a simple yet profound question: "Is it civil, right, reasonable, logical, and sane to promote a cause, lifestyle or practice of a behaviour that could in its ultimate conclusion cause the extinction of the human race? It is insanity to demand the 'celebration' or promotion of your own extinction. Therefore, in many societies homosexuality is considered as

¹⁶⁸ Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance*, Vol 3, No. 3.3 Quarter III 2012.

¹⁶⁹ B. M. Leiser, "Homosexuality and the 'Unnaturalness Argument'", in Velasquez, M. and Rostenkowski, C. (Eds.), *Ethics: Theory and Practice*, New Jersey: Prentice Hall, 1985.

¹⁷⁰ Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance*, Vol 3, No. 3.3 Quarter III 2012.

unnatural not only because it does attack the institution of the family but also ultimately leads to the extinction of the human race.

Conclusion

In this chapter I have demonstrated that the homosexuality debate does not have easy answers. For instance, I have shown that it is difficult to reach a consensus on the definition and causes of homosexuality. I have also presented the pro and con arguments of various topics regarding the phenomenon of homosexuality. Furthermore, it is inevitable that points of view will clash as the homosexual debate unfolds. However, it is important to listen to all the varied views presented in the debate and be involved in a continuous process of critically evaluating their implications.

Chapter 2: The Homosexuality Debate in Malawi

In chapter 1, I gave a general overview of homosexuality. This chapter presents the progression of the homosexuality debate in Malawi. Homosexuality was viewed as a Western practice, which did not have any bearing on Malawian society. Most people used to ignore any discussion on the topic of homosexuality while others denied the existence of homosexuality in Malawi by arguing that it is un-African and therefore, has no relevance and significance in Malawi. However, events in the past decade have shown that homosexuality is a phenomenon that cuts across all sectors of Malawian society. For instance, some Malawians openly became involved in homosexual practices and were taken to a court of law. This incident demonstrated that homosexuality is a controversial subject with religious, socio-economic, political, legal, cultural, and human rights implications. Therefore, the phenomenon of homosexuality calls for a scholarly evaluation in determining the extent of its influence in Malawian society. In this chapter, I will look at the legal status of homosexuality in Malawi, homosexual offences and pro-homosexual and anti-homosexual responses from different sectors.

Legal Status of Homosexuality in Malawi

Malawi, formerly called Nyasaland, was a British colony and it adopted the sodomy laws into its own penal code of 1930.¹ Sodomy laws were seen as a British colonial export to the colonies via the Indian Penal Code, Chapter XVI and Section 377 dating back to 1861.² Section 377 talks about unnatural offences and it stipulates that:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description

¹ Emmie Chanika, John L. Lwanda and Adamson S. Muula, "Gender, Gays and Gain: The Sexualized Politics of Donor Aid in Malawi," *Africa Spectrum*, Vol 48, No 1, 2013.

² Harris Gardiner, "India's Supreme Court Restores an 1861 Law Banning Gay Sex," *The New York Times*, (11.12.2013).

for term which may extend to ten years and shall also be liable to fine.³

The Malawi Penal Code has the following provisions in connection with homosexuality: Section 137A, Section 153, Section 154, and Section 156. Section 137A is on indecent practices between females. Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.⁴

Section 153 of the Penal Code of Malawi is on unnatural offences. It stipulates that any person who (a) Has carnal knowledge of any person against the order of nature; or (c) Permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.⁵

Section 154 is on "attempt to commit unnatural offences." Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.⁶

Section 156 is on "indecent practices between males." Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a

³ C.K. Takwani, *Indian Penal Code*, New Dheli: Eastern Book Company, 2014.

⁴ www.icrc.org/ihl-nat.../Constitution%20Malawi%20-%20EN.pdf, (15.12.2015).

⁵ Ibid.

⁶ Ibid.

felony and shall be liable to imprisonment for five years, with or without corporal punishment (under Section 28 of the Penal Code).⁷

I am of the opinion that the homosexual debate in Malawi should properly be located on the laws that criminalize homosexuality. These laws which criminalize homosexuality serve as the key to unlocking the stalemate in the homosexual debate in Malawi. The government is not yet decided on whether to continue criminalizing homosexuality by maintaining these laws or decriminalize homosexuality by scrapping off these laws from the constitution. However, at the moment these laws are in force; thereby, suggesting that homosexuality is unacceptable in Malawian society.

Homosexuality Offences in Malawi

Some people who have committed homosexuality offences contrary to the Malawi Penal Code have been arrested and prosecuted. For instance, Steven Monjeza and Tiwonge Chimbalanga, Cuthbert Kulemela and Kelvin Gonani, Amon Champyuni, Matthew Belo, and Mussa Chiwisi, and Kelvin Gonani and Davie Loka.

Steven Monjeza and Tiwonge Chimbalanga's Gay Engagement

"Gays Engage!" was the headline on the front page of Malawi's Nation newspaper, on 28 December 2009. Caroline Somanje reports that gay lovebirds: Tiwonge Chimbalanga and Steven Monjeza on Saturday made history when they spiced their Christmas and new year festive season with a traditional engagement ceremony (*chinkhoswe*), the first recorded public activity for homosexuals in the country."⁸

Steven Monjeza and Tiwonge Chimbalanga conducted a public gay engagement on 26th December 2009 at Mankhoma Lodge, Chirimba, in Blantyre. It attracted a huge crowd out of curiosity to witness a gay

⁷ Ibid.

⁸ Caroline Somanje, "Gays Engage," *Nation Newspaper*, (28.12.2009).

engagement in a predominantly heterosexual society.⁹ Police subsequently arrested the couple on 28th December 2009 and charged them with "unnatural offences" and "indecent practices between males" under sections 153 and 156 of the Penal Code.¹⁰

Tiwonge Chimbalanga explained that no one coxed him to do an engagement. He said that it's everybody's right to get married; hence, he was not doing it for others, for the LGBTs so they can come out, but he was doing it for himself.¹¹

I argue that this traditional gay engagement is significant to the homosexual discourse in Malawi for five reasons. First, it ended the fallacy that homosexuality is non-existent in Malawi. Second, it moved the homosexual debate from the private to public domain. In this way, it sparked a hot debate both on the local and international scene. Third, it forced the church to clarify its theological understanding of homosexuality and evaluate its ministry to God's people. Fourth, the arrest and subsequent sentencing of the gay couple raised questions on Malawi's human rights record. Fifth, it brought to the limelight the politics of donor aid in view of its pro-gay strings tied to third world countries like Malawi.

Tiwonge Chimbalanga's Gender

In Steven Monjeza and Tiwonge Chimbalanga's gay relationship, Monjeza took the role of a male while Tiwonge, who was popularly known as 'Aunt Tiwo,' took the role of the female. For this reason, when the news of Steven Monjeza and Tiwonge Chimbalanga's gay engagement broke, people were interested in identifying Tiwonge's gender. Even, in the criminal case that ensued following their engagement, the state prosecutors presented evidence that hinged on Tiwonge's gender.¹²

⁹ Ibid.

¹⁰ www.amnesty.org/en/region/malawi/report-2010, (4.1.2015).

¹¹ Mark Gevisser, "Love in Exile," *The Guardian*, (27.11.2014).

¹² www.malawilii.org/mw/judgment/high-court-general-division/2010/2 (12.1.2015).

Tiwonge Chimbalanga's real name is Stoneck Soko and he hails from Chimbalanga Village, T/A Thomas in Thyolo. He is the fourth born in a family of six. He lived with his uncle, Village Headman Black Chimbalanga, since the age of five due to the death of his parents.¹³ Tiwonge's uncle reported that his nephew was born a man but with some female features like voice and step. He never felt comfortable among fellow men and used to wear wrappers (*chitenje*) as if he was a woman.¹⁴ Annie Manda, chief Chimbalanga's daughter, reports that as a child, Tiwonge had male genitals and dressed as a boy, but his whole behaviour was feminine. This brought much ridicule.¹⁵

Tiwonge was first employed in Blantyre by Vaida Kalua as a houseboy. However, Kalua observed that her houseboy had started wearing feminine clothes. First the *chitenje* and then women's matching top and trousers. Kalua said that it was not a problem for her, but she wanted to protect him, because he was being mocked and insulted by the community. She tried to talk with him about stopping dressing in woman attire but he did not listen.¹⁶

Tiwonge Chimbalanga was later employed by Mrs. Jean Kamphale, the owner of Mankhoma Lodge. Mrs. Kamphale initially thought that she had employed a woman who displayed some male features. When Tiwonge reported for work, he came with Steven Monjeza whom he said was his husband. Mrs. Kamphale told a court sitting in Blantyre that although Tiwonge claimed to be a woman, he actually has male genitals which she personally saw when he was made to undress one day.¹⁷

Abiti Monjeza is an extended grandmother to Steven Monjeza Soko. She was the first witness in the Republic V Steven Monjeza Soko and

¹³ Sirys Kittermaster Williamu, "Homosexuality and the Church in Malawi, Three Schools of Thought: Case Study of Evangelical Church of Malawi (ECOM) Nyasa Mission," University of Malawi, 2012.

¹⁴ "Tiwonge Has Always Amazed Us - Uncle," *Nyasa Times*, (3.1.2010)

¹⁵ Mark Gevisser, "Love in Exile," *The Guardian*, (27.11.2014).

¹⁶ Ibid.

¹⁷ Mrs. Jean Kamphale, Evidence Tendered in Blantyre Magistrate Court, www.malawilii.org/mw/judgment, (12.12.2015).

Tiwonge Chimbalinga Kachepa's case. She said in October 2009 Steven brought Tiwonge to her, to introduce him as his wife and that the two were staying together. When Abiti Monjeza saw Steven's 'wife' for the first time, she asked her grandson whether his 'wife' was male or female. This, according to her she did because the 'wife' did not have feminine features, for example breasts. After some time, Steven told her of the impending engagement ceremony, which later took place at Mankhoma Lodge, and she was present at the ceremony.¹⁸

Flony Frank, the third witness in the Republic V Steven Monjeza Soko and Tiwonge Chimbalinga Kachepa's case said that she had always known Tiwonge as a woman. At some point Tiwonge told her she was getting engaged to Steven. She then lent Tiwonge her wrappers (chitenje) for his engagement. After the engagement, someone brought her a newspaper telling her she had been chatting with a male because the paper had reported that Tiwonge was a male. She was annoyed. She, together with a Mrs. Piringu, went to Tiwonge's house to enquire about the authenticity of the newspaper article, which alleged that he was a man. They then went to Jean Kamphale's house where the first accused was also called and he confirmed that Tiwonge was indeed his wife and he slept with him. She stated that Tiwonge then voluntarily took off his clothes and everybody present including this witness saw that Tiwonge had male private parts.¹⁹

Mr. Mc Evans Phiri, a Principal Psychiatric Clinical Officer at Zomba Mental Hospital was the eighth witness in the Republic V Steven Monjeza Soko and Tiwonge Chimbalinga Kachepa's case. He told the court that he was on 6th January, 2010 presented with the two accused persons. He assessed both accused persons and his findings were that they were both fit to stand trial as they had no psychiatric symptoms and were

¹⁸ Abiti Monjeza, Evidence Tendered in Blantyre Magistrate Court, www.malawilii.org/mw/judgment (12.12.2015).

¹⁹ Flony Frank, Evidence Tendered in Blantyre Magistrate Court, www.malawilii.org/mw/judgment, (12.12.2015).

stable. However, he stated that in his assessment, Tiwonge had gender disorientation as he considered himself a woman.²⁰

Therefore, Tiwonge's gender is considered to be male in a predominantly heterosexual society of Malawi. However, he can properly be identified as a transgendered woman. This demonstrates lack of awareness of LGBTI issues in Malawi. Even Tiwonge himself admitted that he first heard about the word "gay" in the newspaper reports about him.²¹

Steven Monjeza and Tiwonge Chimbalanga's Trial and Sentencing

A criminal case number 359 of 2009 was lodged in the chief resident magistrate's court in Blantyre on 30th December 2009. It was the *Republic V Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa*. The charge sheet read:

The two accused persons stand charged with three counts. The first count relates to the first accused person Steven Monjeza Soko. He is charged with buggery or having carnal knowledge of the second accused person Tiwonge Chimbalanga Kachepa against the order of nature. This is contrary to Section 153(a) of the Penal Code. Under the second count Tiwonge Chimbalanga Kachepa is also charged with buggery or a charge of permitting the first accused person to have carnal knowledge of him against the order of nature. This is contrary to Section 153(c) of the Penal Code. In the alternative, both accused persons are charged with the offence of indecent practices between males contrary to Section 156 of the Penal Code.²²

The couple was convicted on 18 May 2010 of gross indecency and unnatural acts. Judge Nyakwawa Usiwa-Usiwa convicted both men of engaging in gay sex, which he said was "against the order of nature."²³

²⁰ Mr. Mc Evans Phiri, Evidence Tendered in Blantyre Magistrate Court, www.malawilii.org/mw/judgment (12.12.2015).

²¹ Mark Gevisser, "Love in Exile," *The Guardian*, (27.11.2014).

²² www.malawilii.org/mw/judgment/high-court-general-division, (15.12.2015).

²³ "Malawi Court Convicts Gay Couple," *BBC News*, (18.5.2010).

Lawyers representing the couple asked for a lighter sentence by arguing that unlike in a rape case, there was no complainant or victim in this case. "Here are two consenting adults doing their thing in private. Therefore, nobody will be threatened or offended if they are released into society."²⁴

Judge Nyakwawa Usiwa-Usiwa pronounced his landmark judgment in the Open Court at Blantyre, on 20th May 2010:

Fortunately, Learned Counsel put this court in a very correct context: that we are sitting in place of the Malawi society. Which I do not believe is ready at this point in time to see its sons getting married to other sons or cohabiting or conducting engagement ceremonies. I do not believe Malawi is ready to smile at her daughters marrying each other. Let posterity judge this judgment.

So this case being "the first of its kind", to me, that becomes "the worst of its kind." I cannot imagine more aggravated sodomy than where the perpetrators go on to seek heroism, without any remorse, in public, and think of corrupting the mind of a whole nation with a chinkhoswe ceremony. For that, I shall pass a scaring sentence so that "the public must also be protected from others who may be tempted to emulate their [horrendous] example"... So, I sentence Steven Monjeza and Tiwonge Chimbalanga to 14 years IHL each and that is the maximum under section 153 of the Penal Code, for the reasons I have explained above. I need not remind Counsel that both the conviction and this sentence are appealable before the High Court of Malawi.²⁵

Gift Trapence, executive director of CEDEP, an organization which paid for the defense, described the judgment as a sad day for Malawi. How can they get 14 years for loving one another? Even if they are jailed for 20 years, you can't change their sexuality.²⁶ The sentence was also condemned by regional human rights organizations including AIDS and

²⁴ Ibid.

²⁵ www.malawilii.org/mw/judgment/high-court-general-division/2010/2/, (15.12.2015).

²⁶ "Malawi Gay Couple gets Maximum Sentence of 14 Years," *BBC News*, (20.5.2010).

Rights Alliance for Southern Africa, the Southern Africa Litigation Centre, the Centre for the Development of People, and the Centre for Human Rights and Rehabilitation. In addition, international human rights organizations such as Amnesty International and the International Gay and Lesbian Human Rights Commission reacted with condemnation. Equally, donor entities like the African Development Bank, the European Union, and the World Bank and foreign governments such as the United States, the United Kingdom, Germany, and Norway condemned the sentencing.²⁷

Thus, I am of the view that Steven Monjeza and Tiwonge Chimbalanga's case exposed Malawi's human rights record; consequently, producing a local and international outcry for the government of Malawi to abide by the international human rights instruments which it ratified.

The Gay Couple's Pardon

On 29 May 2010, the then President of the Republic of Malawi, late Professor Bingu wa Mutharika, pardoned Steven Monjeza and Tiwonge Chimbalanga during a visit by Ban Ki-Moon, the United Nations Secretary General. Professor Mutharika, who had previously dismissed homosexuality as alien, said he had set them free on humanitarian grounds:

In all aspects of reasoning, in all aspects of human understanding, these two gay boys were wrong - totally wrong. They committed a crime against our culture, against our religion, and against our laws. We don't condone marriages of this nature. It's unheard of in Malawi and it's illegal. However, now that they have been sentenced, I as the president of this country have the powers to pronounce on them and therefore, I have decided that with effect from today, they are pardoned and they will be released.²⁸

²⁷ Jessica Geen, "Malawi Gay Couple Found Guilty of 'Unnatural Acts' and 'Gross Indecency,'" *Pinknews*, (18.5.2010).

²⁸ "Malawi Pardons Jailed Gay Couple," *BBC News*, (29.5.2010).

This led to the suspicion that Ban Ki-Moon influenced the decision to pardon the couple. Mr. Ban Ki-Moon hailed the president's decision as courageous in an environment of a boldening public opinion against gay rights. He also met with parliamentarians encouraging them to reform anti-homosexuality laws that date back to colonial times. He bemoaned the fact that laws that criminalize people on the basis of their sexual orientation or gender identity still exist in some countries. He further encouraged Malawi to update its penal code in a way that lives up to international standards.²⁹

However, some anti-gay campaigners in Malawi faulted the president on the pardon. They concluded that the president was responding to the international outcry. Also, Ban Ki-Moon's visit to Malawi was understood as a cover up for negotiating the gay couple's release.³⁰

Mauya Msuku, the gay couple's lawyer, observed that a possibility existed for the couple to be re-arrested if they continued their relationship, since the pardon only applied to the offence under which they were convicted. If, for example, they go back and the state is of the view that they have recommitted the offence, the pardon will not apply.³¹

Cuthbert Kulemela and Kelvin Gonani's Arrest on Gay Charges

Malawi Police had arrested Cuthbert Kulemela (19) and Kelvin Gonani (39) in Area 25, Lilongwe, for allegedly having gay sex in December 2015.³² Esther Nkwanda, Kanengo Police spokesperson, said that the incident happened after the two had been at a drinking joint and agreed to go to Gonani's house where it is alleged that they had gay sex.³³ Furthermore, she added that when Kulemela was leaving the house he was met by community policing members who asked him about what

²⁹ Karlen Allen, "Malawi Pardons Jailed Gay Couple," *BBC News*, (29.5.2010).

³⁰ "Malawi President Pardons Jailed Gay Couple," *AP*, (29.5.2010).

³¹ "Malawi Gay Couple Released after Presidential Pardon," *BBC News*, (30.3.2010).

³² Wanga Gwede, "Two Men Nabbed for 'Gay Sex' Act Charged in Malawi," *Nyasa Times*, (9.12.2016).

³³ *Ibid.*

had transpired in the house and he confessed to having gay sex with Gonani.³⁴

Three Men Arrested for Homosexual Practice

Three men were separately arrested and convicted on homosexual charges by magistrate courts in Blantyre in 2010 and 2011. The three are: Amon Champyuni, Matthew Belo, and Mussa Chiwisi. Amon Champyuni was convicted on 27 July 2011 and given the maximum 14-year jail term sentence. Matthew Belo was convicted on 7 September 2010 and was sentenced to 12-year jail term. Mussa Chiwisi was slapped with a 6-year jail term on 29 September 2010.³⁵

Kelvin Gonani and Davie Loka Arrested for Having Public Gay Sex

Magistrate Arthur Mtalimanja of the Lilongwe Magistrate Court convicted and fined two gay men for outraging public decency after they were caught having sex in a public place in the capital city. Kelvin Gonani performed the gay sex act with Davie Loka in a car park on 4 December, 2016, the court heard through prosecutor Sergeant Ruth Chiunjika. They were answering to offences relating to idle and disorderly persons in public place contrary to Sections 180 to 184 of the Penal Code of the Laws of Malawi. The couple pleaded guilty for engaging in sexual activity. Magistrate Arthur Mtalimanja said the two men need to be taught a lesson by being fined K50, 000 each for their “unacceptable behaviour.”³⁶

³⁴ Ibid.

³⁵ “Malawi Court to Review Sodomy Laws,” *Nyasa Times*, (5.11.2013).

³⁶ Zawadi Chilunga, “Malawi Court Convicts Gay Couple over Sex Act in Public Place,” *Nyasa Times*, (22.12.2016).

This is not the first time for Gonani to be in headlines for same-sex relationship. Late last year, police arrested Gonani and Cuthbert Kulemeka over homosexual acts. Government dropped the charges after pressure from donors and some civil society organisations (CSOs).³⁷

Pro-Homosexuality Arguments in Malawi

There have been responses that argue in favour of homosexuality in Malawi. These responses are given by Non-Governmental Organizations (NGO), government, politicians, some religious leaders, western donor countries, etc.

Pro-Homosexuality Responses from NGO's/Human Rights Organizations

Pro-homosexuality responses from Non-governmental Organizations (NGOs) have focused on the alleged human rights abuse inflicted on homosexual persons in Malawi. These responses are discussed below.

Right to Non-discrimination

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights instruments like the Universal Declaration of Human Rights (UDHR)³⁸ and African Charter of Human and People's Rights (ACHPR).³⁹

Section 20 of the Constitution of Malawi is the core provision for the equality of all persons before the law and equal protection without any discrimination. It states that discrimination of any persons in any form

³⁷ mwnation.com/govt-bows-down-to-donors-pressure, (20.12.2015).

³⁸ Non-discrimination is enshrined in Article 2 of the Universal Declaration of Human Rights, www.claiminghumanrights.org, (20.11.2015).

³⁹ Art 2 of the African Charter provides that: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic groups, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."

is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.⁴⁰

Steven Monjeza and Tiwonge Chimbalanga's arbitrary arrest and imprisonment on multiple charges of unnatural practices and gross indecency was tantamount to discrimination in criminal justice.⁴¹

Gift Trapence argued that the arrest of Cuthbert Kulemela and Kelvin Gonani in Lilongwe on sodomy charges violated their right to non-discrimination based on their perceived or real sexual orientation.⁴²

CHRR and CEDEP have cited the UDHR, ACHPR, and the Malawian Constitution in arguing for the promotion of sexual minority rights in Malawi.⁴³ However, critics have pointed out that sexual orientation is not regarded as a basis of discrimination in all the human rights instruments cited above and in the constitution of Malawi. Hence, sexual orientation cannot be considered as a human rights issue.

Thus, I am of the opinion that gay rights campaigners can advance their struggle by ensuring that the international human rights instruments explicitly single out sexual orientation as a basis of discrimination. Also, Section 20 of the constitution of Malawi should be amended to include sexual orientation as a basis of discrimination just as the constitution of the Republic of South Africa, section 9 (3) explicitly states that sexual orientation is a basis of discrimination.⁴⁴

⁴⁰ sdnp.org.mw/constitution/intro.html (20.11.2015).

⁴¹ "A Manual on Human Rights and Sexual Orientation in Malawi," Itech Corp Designs and Publishers, 2011.

⁴² Wanga Gwede, "US Envoy Urges Malawi to Drop Charges for Gay Couple," *Nyasa Times*, (15.12.2015).

⁴³ "A Manual on Human Rights and Sexual Orientation in Malawi," Itech Corp Designs and Publishers, 2011.

⁴⁴ www.gov.za/.../constitution/constitution-Republic-South-Africa, (21.3.2016).

Right to Privacy

The right to privacy is a right to keep our domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose.⁴⁵

Section 21 of the Constitution of the Republic of Malawi states that "Every person shall have the right to personal privacy which shall include the right not to be subjected to: (a) searches of his or her person, home or property; (b) the seizure of private possessions; or (c) interference with private communication, including mail and all forms of telecommunications."⁴⁶

Human rights campaigners criticized the state for violating the right to privacy of the Malawian gay couple, Steven Monjeza and Tiwonge Chimbalanga, when they were arrested in 2009. In particular, Tiwonge Chimbalanga was subjected to very dehumanizing treatment since both people and the authorities were keen to establish his gender identity. Hence, the only way to do that was to undress him and see his genitals. For instance, three state witnesses in the court case between the Republic v Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa testified that they physically inspected Tiwonge's genitals and established that he was a man. The three: Ms. Flony Frank, Mrs. Jean Kamphale, and Mrs. Nyaradzayi Piringu⁴⁷ who are all women made Tiwonge Chimbalanga to undress before them. This act of undressing before female members, whether it was voluntary or involuntary, is tantamount to a violation of the right to privacy contrary to the Constitution of Malawi (Section 21) and the international human rights

⁴⁵ Yael Onn, et al., *Privacy in the Digital Environment*, University of Haifa: HCLT, 2005.

⁴⁶ sdnp.org.mw/constitution/intro.html, (14.11.2015).

⁴⁷ www.malawilii.org/mw/judgment/high-court-general-division/2010/2, (10.1.2015).

obligations under the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.⁴⁸

The arrest of Cuthbert Kulemela and Kelvin Gonani in Lilongwe on sodomy charges was criticized by gay rights activists that it violated their right to privacy. In this case, community policing members waited for Kulemela to come out of Gonani's house and started quizzing him about what transpired in the house; to which, he admitted having gay sex.⁴⁹

CHRR and CEDEP argued that restrictive laws criminalizing homosexual practice promote invasive actions that interfere with a person's privacy and human dignity. For instance, the suspected homosexuals are subjected to intrusion into their bodily integrity through non-consensual medical tests, or experiments, searches of their homes, communications among others.⁵⁰

Thus, I argue that the right to privacy will continue to be violated on the part of the LGBTI community in Malawi as long as the laws that criminalize homosexuality are in force.

Right to Health

Section 13 (c) of the constitution of the Republic of Malawi states that the State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the provision of adequate health care, commensurate with the health needs of Malawian society and international standards of health care.⁵¹

⁴⁸ D. Mujuzi, "Discrimination against Homosexuals in Malawi: Lessons from the Recent Developments" *International Journal of Discrimination and the Law*, Vol. 11 no. 3 (2011), pp. 150-160.

⁴⁹ Wanga Gwede, "Two Men Nabbed for 'Gay Sex' Act Charged in Malawi," *Nyasa Times*, (9.12.2015).

⁵⁰ "An Analysis of Legal and Policy issues in Malawi in the Context of Lesbian, Gay, Bisexual and Transgender People's Human Rights and HIV/AIDS," Itech Corp Designs and Publishers, 2011.

⁵¹ sdnp.org.mw/constitution/intro.html, (12.10.2014).

Malawi is one of the poorest nations in the world⁵² and it is struggling to deal with the HIV/AIDS pandemic. Human rights are an integral part in addressing the HIV/AIDS epidemic. CHRR and CEDEP have argued that human rights violations increase the vulnerability of HIV infection among the LGBTI community in Malawi. Discriminatory policies and practices can also result in people being denied access to the information, support and services necessary to make informed decisions and to reduce their vulnerability and risk of HIV/AIDS infection. Moreover, many homosexuals in Malawi operate underground due to stigmatization and discrimination coupled with incriminating laws against homosexuality in Malawi. This situation poses serious challenges on HIV and AIDS interventions, but gay rights campaigners have failed to provide substantive evidence proving their allegations that homosexuals are being denied health care services in Malawi on the basis of sexual orientation. Moreover, government hospitals in Malawi do not require anyone to disclose their sexual orientation as a prerequisite for accessing health care.⁵³

Right to Dignity

Human dignity is the basis of all fundamental human rights. Human dignity is inviolable and it must be respected and protected. The dignity of the human person is not only a fundamental right in itself but constitutes the basis of fundamental rights in international law. The 1948 Universal Declaration of Human Rights enshrined this principle in its preamble: "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." For this reason, the dignity

⁵² Green Muheya, "Malawi now Ranked the Poorest in the World: President Talks of Desperate Need for Aid," *Nyasa Times*, 17.2.2015.

⁵³ "An Analysis of Legal and Policy issues in Malawi in the Context of Lesbian, Gay, Bisexual and Transgender People's Human Rights and HIV/AIDS," Itech Corp Designs and Publishers, 2011.

of the human person is part of the substance of any right protected by international human rights law.⁵⁴

CEDEP and CHRR observe that homosexuality as a form of sexual orientation makes the human rights discourse to have implications on human dignity. The aspect of personal autonomy which is central to the right to human dignity is implicated by laws or practices that prevent people from acting as autonomous beings by prohibiting them from conforming to their particular sexual orientation.⁵⁵ The operation of the guarantees for the human right to personal autonomy in this regard implies strict restrictions on what actions the state or private entities can regulate on private acts done by consenting adults in private.⁵⁶

Section 19 of the Malawi Constitution stipulates the provisions of human dignity and personal freedoms. In particular, Section 19 (1) states that the dignity of all persons shall be inviolable.⁵⁷ However, in the case of Steven Monjeza and Tiwonge Chimbalanga the state violated the accused persons' human dignity by subjecting them to public homophobic hate speech during their judicial proceedings.⁵⁸ This was contrary to Section 19 (2) which states that in any judicial proceedings before any organ of the state, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.⁵⁹ The state violated the human dignity of the gay couple when they were subjected to humiliating medical

⁵⁴ Doron Shultziner, "Human Dignity - Functions and Meanings," *Global Jurist* 3 (3):2003.

⁵⁵ "An Analysis of Legal and Policy issues in Malawi in the Context of Lesbian, Gay, Bisexual and Transgender People's Human Rights and HIV/AIDS," Itech Corp Designs and Publishers, 2011.

⁵⁶ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

⁵⁷ sdnp.org.mw/constitution/intro.html (14.12.2015).

⁵⁸ The gay couple was subjected to homophobic insults on several occasions during their court proceedings when they were being brought to court and when leaving the court premises. "Malawi Gay Couple Denied Bail ahead of Trial Scheduled for Next Week," *The Guardian*, (5.1.2010).

⁵⁹ sdnp.org.mw/constitution/intro.html, (14.12.2015).

examination aimed at proving that they had sexual relations.⁶⁰ This was contrary to Section 19 (5) which states that no person shall be subjected to medical or scientific experimentation without his or her consent.⁶¹ Also, CEDEP criticized the Malawian authorities for subjecting two suspects: Cuthbert Kulemela and Kelvin Gonani to forcible anal and medical examinations to establish if they had sex in order to charge them with sodomy. Such forcible anal examination without the men's consent is tantamount to the violation of the right to human dignity because it contravenes the absolute prohibition of torture and other cruel, inhumane and degrading treatment or punishment.⁶²

Having discussed homosexuality from a human rights perspective, I will now present a discussion on the pro-homosexual responses from the government of Malawi.

Government's Pro-homosexuality Responses

Malawi government's pro-homosexual responses from the late Bingu wa Mutharika's administration to Prof. Peter Mutharika's administration are analyzed below.

The Secretary for Nutrition, HIV and AIDS Advocates for Gay Rights

The first public government comment on homosexuality in Malawi was made in September 2009. Dr Mary Shawa, the Secretary for Nutrition, HIV and AIDS in the president's office argued that there is a need to incorporate a human rights approach in the delivery of HIV and AIDS services to such risk groups like men who have sexual intercourse with men if we have to fight AIDS. She further mentioned that Malawi had registered a 25 percent HIV and AIDS prevalence rate among gays.⁶³

⁶⁰ David Smith, "Married Malawian Gay Couple Face Test to Prove they had Sexual Relations," *The Guardian*, (1.1.2010).

⁶¹ sdnp.org.mw/constitution/intro.html (.12.2015).

⁶² Wanga Gwede, "US Envoy Urges Malawi to Drop Charges for Gay Couple," *Nyasa Times*, (15.12.2015).

⁶³ Mavuto Banda, "Gay Rights Way to Fight AIDS in Malawi-Official," *Reuters*, (15.9.2009).

However, in most cases statements of this nature are just a political rhetoric aimed at wooing donor money and projecting a good human rights image to the international community.

Bingu Orders a Review of Laws Criminalizing Homosexuality

Late President Bingu wa Mutharika initiated a constitutional review of the laws that criminalize homosexuality by ordering the Malawi Law Commission to review the provisions of the penal code concerning "indecent practices and unnatural acts."⁶⁴

Ephraim Mganda Chiume, the former Justice Minister and Dr George Chaponda jointly addressed a press conference announcing the proposed constitutional review. Chiume was quoted as saying, "in view of the sentiments from the general public and in response to public opinion regarding certain laws, the government wishes to announce to the Malawi nation that it is submitting the relevant laws and provisions of laws to the Law Commission for review."⁶⁵

However, the press release did not indicate a time frame for the review. In this case, it is important to consider why President Bingu wa Mutharika changed his hardline stance against homosexuality by proposing the constitutional review. First, President Bingu wa Mutharika wanted to win the support of western countries like USA, Britain, and Germany which had suspended their donor aid to Malawi. Second, the Bingu wa Mutharika administration wanted to paint a rosy picture of their commitment for improving its human rights record to both the local and international community by reviewing repressive and draconian laws which facilitated gross human rights violations.

President Joyce Banda Pledges to Repeal the Anti-homosexuality Laws

President Joyce Banda pledged in her first State of the Nation address on 18 May 2012 to repeal the anti-homosexual laws. Speaking in the

⁶⁴ "Malawi to Review Gay Ban, Bad Laws- Justice Minister", *Nyasa Times*, (8.12.2011).

⁶⁵ Ibid.

Malawi Parliament on the sub-topic of human rights, rule of law, and access to justice, she said:

Mr. Speaker, Sir, Government is committed to the promotion of human rights, democracy, the rule of law and access to justice as provided for in our constitution. With respect to the rule of law, during the 2011/2012 fiscal year, the country experienced a deterioration of human rights, rule of law and governance. Due to poor political and economic governance, donors withdrew and or suspended aid to Malawi and the investment climate worsened. Court orders were not complied with and many repressive laws were passed in this August House... In the 2012/2013 fiscal year, we will continue with the law reform programme and finalize review of the laws. Some laws which were duly passed by this August House and were referred back to the Malawi Law Commission will be repealed, as a matter of urgency, and these include: the provisions regarding indecent practices and unnatural acts contained in Sections 137 A and 153-156 of the Penal Code.⁶⁶

President Joyce Banda backtracked from her pledge to repeal anti-homosexuality laws in September 2012 after fierce criticism from parts of the religious fraternity.⁶⁷ She told the Associated Press (AP) that Malawi was not yet ready to repeal the laws:

Where Malawi is and most African countries are, is maybe where America or the UK was about 100 years ago. The best thing the world can do is to allow each country to take its course, to allow each country to have that debate freely without the pressure of being pushed... The risk of pressing too fast for reform could be to incite violence... We have seen countries where homosexuals have been killed. Why? Because in my view, the country –Malawi - isn't yet ready. Anyone who has listened to the debate in

⁶⁶ "Malawi President Banda's State of the Nation Address in Full," *Nyasa Times*, (18.5.2012).

⁶⁷ Sacramento Bee, "Malawi Unlikely to Axe anti-Gay Laws," *AP*, (28.9.2012).

Malawi realizes that Malawians are not ready to deal with that right now.⁶⁸

President Banda further backtracked from her pledge to repeal the anti-gay laws during a live radio broadcast aired by Zodiak Broadcasting Station (ZBS), on 31st December 2012:

I leave the issue of same-sex marriages in the hands of Malawians and I feel great listening to people debating the issue. I don't have powers to make laws, all the laws are passed in parliament and this depends on what people want. As a Christian I have my own feelings but as a leader I can't impose my feelings on Malawians, let them decide.⁶⁹

Ralph Kasambara, Malawi's former Justice Minister and Attorney General suspended the laws criminalizing homosexuality in a radio debate organized by CHRR and CEDEP on 5th November 2012. He said that there is a moratorium on all such laws, meaning that police will not arrest or prosecute anyone based on these laws. These laws will not be enforced until the time parliament makes a decision.⁷⁰ Kasambara's sentiments were echoed by Janet Chikaya Banda, the Secretary for Justice, Minister and Attorney General, in a statement to the UN Human Rights Committee in Geneva. She argued that while no formal body had been created to review the possibility of decriminalizing homosexuality in Malawi, there is political will to do so.⁷¹

Kasambara defended the government's move to suspend the laws in order to create a free environment for debate on homosexuality in the country. He further argued that if we continue arresting and prosecuting people based on such laws and later such laws are found to be

⁶⁸ Ibid.

⁶⁹ Dan Littauer, "Malawi President refuses to commit to Repeal Anti-Gay Laws," *Gay Star News*, (2.1.2013).

⁷⁰ Godfrey Mapondera, David Smith, "Malawi's Lawyer's Group Questions Legality of Suspending Anti-Gay Laws," *The Guardian*, (8.11.2012).

⁷¹ Colin Stewart, "It's Official: No more Malawi Arrests under Anti-Gay Laws", <http://76crimes.com/2014/07/14/its-official-no-more-malawi-arrests-under-anti-gay-laws/> (13.7.2015).

unconstitutional it would be an embarrassment to government. It is better to let one criminal get away with it rather than throw a lot of innocent people in jail.⁷²

Amnesty International hailed Malawi and Kasambara for the alleged suspension in its statement of November 5, 2012:

Today's statement by Malawi's Justice Minister that laws criminalizing same sex sexual conduct are suspended pending a decision on whether or not to repeal them is a historic step in the fight against discrimination in the country. Amnesty International welcomes minister Kasambara's statement and hopes it serves as the first step towards ending discrimination and persecution based on real or perceived sexual orientation and gender identity in Malawi.⁷³

A week later, Kasambara denied that he ever released a statement on the suspension of the laws after a fierce criticism from the religious community and the Malawi Law Society. "There was no talk of suspension of any provision of the penal code or any discussion on same-sex marriages."⁷⁴ However, he did not refute print media reports that said that he had talked about the said suspension at a minority rights debate organized by the Centre for Human Rights Rehabilitation (CHRR) and Centre for Development of People (CEDEP) in Lilongwe, on 5 November 2012.⁷⁵

⁷² "Malawi Law Society Faults Kasambara on Easing Anti-Gay Laws," *Nyasa Times*, (7.11.2012).

⁷³ "Kasambara Denies Suspending Gay Laws, but you can Become a Gay for now and Police won't Arrest you," *Malawi Voice*, (7.11.2012).

⁷⁴ Godfrey Mapondera, David Smith, "Malawi's Lawyer's Group Questions Legality of Suspending Anti-Gay Laws," *The Guardian*, (8.12.2012).

⁷⁵ "Kasambara Denies Suspending Gay Laws, but you can Become a Gay for now and Police won't Arrest you," *Malawi Voice*, (7.11.2012).

The moratorium on anti-gay laws was tested when Malawi Police arrested two men: Cuthbert Kulemela and Kelvin Gonani for having gay sex in Lilongwe on 7 December 2015.⁷⁶

Samuel Tembenu, Justice Minister, announced a moratorium on anti-gay Laws in December 2015.⁷⁷ He said that Malawi has suspended the laws against same-sex relationships pending a decision on whether or not to repeal the legislation.⁷⁸ The Justice Minister further observed that the process of repealing the laws will be done in consultation with the people of Malawi as prescribed by the Constitution.⁷⁹

High Court's Decision to Review Anti-homosexuality Laws

The Malawi High Court took a landmark step in the debate on the legalization of homosexuality in Malawi by deciding to review the constitutionality of the country's sodomy laws. The constitutionality or unconstitutionality of the sodomy laws will be determined based on a review of three separate cases in which three men were convicted for engaging in homosexual activities.⁸⁰

The three men are Amon Champyuni, Matthew Belo, and Mussa Chiwisi. They were all convicted by magistrate courts in Blantyre. Champyuni convicted on 27 July 2011 was given the maximum 14-year jail term; Belo convicted on 7 September 2010 was sentenced to a 12-year jail term; while Chiwisi was slapped with a 6-year jail term on 29 September 2010.⁸¹

⁷⁶ Wanga Gwede, "Two Men Nabbed for 'Gay Sex' Act Charged in Malawi," *Nyasa Times*, (9.12.2015).

⁷⁷ Thom Chiumia, "Malawi Drops Charges against Gay Men: Anti-Homosexual Laws Suspended, says Justice Minister," *Nyasa Times*, (20.12.2015).

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Frank Namangale, "Homosexual Laws under Microscope," *The Nation*, (9.11.2013).

⁸¹ Ibid.

The constitutional review will consider the convictions of the three based on the constitutionality of Section 153 (A) of the Penal Code vis-à-vis Section 20 (1) of the constitution.⁸²

The court issued an open call, advertised in the *Nation* newspaper, to all interested parties like MLS, MHRC, civil society organizations, religious groupings and individuals to apply to join the matter as *amici curiae* (friends of the courts).⁸³

On one hand, those seeking to overturn the nation's anti-gay laws include the MLS, CEDEP, CHRR, the University of Malawi's Faculty of Law, the Malawi Network of Religious Leaders Living with or Affected by HIV, and UNAIDS. On the other hand, the Attorney General's office and Pastor Nick Chakwera are arguing in favor of retaining the laws that criminalize homosexuality.⁸⁴

The High Court argued that it had made the decision to review the sodomy laws by exercising its own jurisdiction under the constitution and the Courts Act. However, the Malawi Council of Churches challenged the Court for adopting a constitutional approach to the matter and proposed that a national referendum should be held to decide whether homosexuality should be legalized or not. Rev Dr Osborne Joda Mbewe argued that a single judge sitting in the court cannot and must not determine on an issue like homosexuality which touches on the constitutionality of a matter affecting all Malawians. Without prejudicing the court process, we feel that the best way for this matter to be resolved is to engage all Malawians of capability to cast a vote on the way forward on the matter. A referendum must decide this matter.⁸⁵

⁸² Ibid.

⁸³ "Malawi Court to Review Sodomy Laws," *Nyasa Times*, (5.11.2013).

⁸⁴ Colin Stewart, "3 in Malawi Prisons Await Ruling on Sodomy Law," *76 Crimes*, (16.6.2014).

⁸⁵ Patricia Masinga, "Malawi Churches Call for Referendum on Homosexuality," *Nyasa Times*, (2.2.2014).

Gift Trapence, director of CEDEP, argues that they want the court to declare the laws that criminalize homosexuality in Malawi unconstitutional. We are also seeking a review of sentences passed by the courts to three men who are serving long jail terms for homosexual acts. As long as same-sex relationships are consensual and done in private, no one has business to get bothered.⁸⁶

Meanwhile, Pastor Nicky Chakwera who is siding with the Attorney General in the case responded to the High Court's call to join in the matter as *amici curiae* (friend of the court). In his submission, he observed that the constitution's preamble makes at least two foundational thoughts clear. Firstly, it is the *people of Malawi* that are the ultimate basis of this Constitution because they are the ones who had the power to adopt it. Secondly, it was "guided by their private consciences and collective wisdom." This means that any attempt to interpret the Constitution is an attempt to interpret the will of the people of Malawi as was codified in the Constitution. Therefore, it seems the first guiding question for the court in any honest effort to interpret the Constitution is this: "Is this what the *people of Malawi* said they want?" Asking whether something is constitutional or not is asking whether Malawians approved it or not.⁸⁷

Pastor Nicky Chakwera argues that the people of Malawi have a right and duty to maintain the illegality and criminality of homosexual behaviour as stipulated in Section 153 (A) of the Penal Code.⁸⁸

Pastor Nicky Chakwera observes that Section 20 (1) which says: "Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against

⁸⁶ "Malawi Rights Group Seeks Review of Imprisoned Gay's Jail Sentences," *AFP*, (20.1.2014).

⁸⁷ Nicky Chakwera, "In the Matter of the Constitutionality of Section 153 (A) of the Penal Code, A Citizen's Opinion, Submitted to the Registrar of High Court of Malawi and Malawi Supreme Court of Appeals in Fulfilment of the Call for Individuals to Join the Matter as *Amici Curiae*," Personal Interview, ICA, Lilongwe, March 2015.

⁸⁸ *Ibid*.

discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status" does not single out homosexual conduct as a basis for discrimination. Also, the phrases common in pro-LGBTI laws like "sexual orientation," or "sexual preference" or "gender identity" or "sexual diversity" do not appear in this section at all.⁸⁹

Moreover, the fact that the Malawian Constitution does not protect homosexual behaviour can be appreciated if we compare it with the South African Constitution, which explicitly protects homosexuality. The South African Constitution says in section 9 (3): "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, *sexual orientation*, age, disability, religion, conscience, belief, culture, language and birth."⁹⁰ The phrase 'sexual orientation' is not redundant but communicating something that is not in the text already. If we removed that phrase, we would remain with what we have in our Malawian Constitution. In other words, 'sex' is not the same as 'sexual orientation'.⁹¹ The importance of this constitutional review is that it has implications on LGBTI rights. For instance, the court's judgment in this case will determine whether or not Malawi as a country should fully grant LGBTI rights or should continue limiting these rights to its citizens.

A Proposal for a Referendum on the Legalization of Homosexuality

Three presidential hopefuls for the May 2014 tripartite elections: Rev Dr Lazarus Chakwera of the Malawi Congress Party (MCP), Prof. Peter Mutharika of the Democratic Progressive Party (DPP), and Atupele Muluzi of the United Democratic Front (UDF), proposed a national

⁸⁹ Ibid.

⁹⁰ www.info.gov.za/documents/constitution/1996/96cons2.htm, (12.3.2015).

⁹¹ Nicky Chakwera, Nicky Chakwera, "In the Matter of the Constitutionality of Section 153 (A) of the Penal Code.

referendum on the homosexual debate.⁹² However, the sexual minority rights groups like CEDEP and CHRR are opposed to a national referendum arguing that fundamental human rights cannot be subjected to a referendum but should just be granted in the constitution of the Republic of Malawi:

While we agree that the issue of gay rights is an issue of national importance, hence requiring national approaches in addressing it, we do not agree that a referendum is one of those approaches. A referendum is not and cannot be the best way to proceed in a matter concerning a minority. All kinds of issues might be put to a court of public opinion, but the rights of minorities to fair and equal treatment before the laws is simply not a matter of public approval.⁹³

In September 2015, President Peter Mutharika told MBC Television that his government will resort to call for a referendum for the citizens to vote for a 'Yes' or 'No' in deciding whether or not homosexuality and abortion should be legalized.⁹⁴

Why did President Peter Mutharika propose a referendum on the homosexual debate in Malawi? The president prefers a referendum not because he believes it is the right option but for obvious political reasons. He knows that donors withdrew aid to Malawi when the late Bingu wa Mutharika's government took a strong stance against gay rights in 2010. Similarly, President Joyce Banda knew that donors threatened to withdraw their aid to Malawi partly because of government's suppression of gay rights; hence, she cooperated with the donors by supporting gay rights.⁹⁵

President Peter Mutharika proposed a referendum as a way of escaping confrontation with donors. Unlike President Joyce Banda who was ready to push the matter to parliament, Mutharika does not want to

⁹² "Chakwera, Mutharika, Atupele Trashed over Gay Referendum," *Nyasa Times*, (15.10.2013).

⁹³ Ibid.

⁹⁴ "Referendum for Same-sex Affairs in Malawi- Mutharika," *Nyasa Times*, (9.9 2015).

⁹⁵ Ibid.

confront Malawians either. A referendum will make Malawians to take responsibility of the outcome; thereby, Mutharika will not be held responsible by either the donors or Malawians.⁹⁶

Gay rights campaigners have argued that minority rights must not be subjected to a referendum. Gay rights are human rights because gays themselves are human beings unless proven otherwise. Therefore, since human rights are inalienable, they must never be subjected to any kind of a vote because such an action could render them alienable.⁹⁷

Gerald Viola, State House spokesperson clarified President Peter Mutharika's remarks that he will not call for a homosexuality referendum. The president was only expressing an opinion regarding the issue. Furthermore, the president does not make laws and as such, he cannot bypass the parliament and the cabinet by suggesting a referendum.⁹⁸ I am of the opinion that politicians have properly understood the implications of the homosexual phenomenon in Malawi. They are aware that the majority of Malawians are against homosexuality and that only a minority are for it. Therefore, it is inconceivable for any politician who wants majority votes to toe the line of the minority.

Pro-Homosexuality Responses from some Religious Leaders

Some religious leaders in Malawi have given pro-homosexuality responses to the debate. These include three CCAP clerics and a Muslim cleric.

Responses from CCAP Blantyre Synod Clerics

Some clergy from the Church of Central Africa Presbyterian (CCAP) objected to Apostle Chilenje's position that gays should be executed in Malawi. Reverend MacDonald Kadawati said that the Bible should not be interpreted literally. Another senior cleric of the same Church, Rev Dr Felix Chingota, on 15 May 2011 asked the church to be firm in the

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ "Mutharika U-turn on Gay Sex Vote: State House Clarifies Referendum Remarks," *Nyasa Times*, (5.9.2015).

inclusion of homosexuals, arguing that its policy was to accommodate people from different backgrounds who needed salvation. The comments were supported by Rev Dr Silas Ncozana, a retired senior clergyman of the CCAP, who reportedly said that homosexuals needed salvation and should not face death as was the case in some countries.⁹⁹

Sheikh Tambuli Advocates for Gay Rights

Sheikh Tambuli is one of the first Muslim clerics in Malawi to advocate for gay rights. However, the Muslim Association of Malawi (MAM) issued a statement condemning Sheikh Mdala Ali Tambuli and human rights activists who are pushing for the legalization of homosexuality in the country. Sheikh Tambuli was quoted in the "Nation on Sunday" newspaper saying that it was high time that homosexuality was legalized for the betterment of minority groups in the country.¹⁰⁰

MAM claimed that homosexuality is not only evil and sinful but also illegal and criminalized under sections 153 and 156 of the Penal Code, therefore supporting, aiding or abetting of any illegal activities constitute crime.¹⁰¹

MAM said that Sheikh Tambuli's position is inconsistent with the Quran and the teachings of Islam. Homosexuality is clearly categorized in the Holy Quran as evil and sinful as evidently seen in the destruction of Sodom and Gomorrah during the time of Lot when such immoral acts were being practiced. If indeed Allah wanted to guarantee the so called human rights to the homosexuals, then him (Allah) should not have punished and destroyed Sodom and Gomorrah (Quran 7:80-84).¹⁰²

Sheikh Tambuli's position demonstrates that divergent views on homosexuality exists even within the religious community. The homosexual

⁹⁹ Joseph Mulenga, "How Sociology enriches Human Rights: The Case of Malawi's First Openly-gay Couple," 2012.

¹⁰⁰ "Malawi Muslim Group Condemns Sheikh Tambuli, Gay Campaigners," *Nyasa Times*, (24.10.2014).

¹⁰¹ Ibid.

¹⁰² www.thereligionofpeace.com, Quran (7:80-84), (20.4.2016).

debate in Malawi has produced two camps: on one hand religious leaders who want to decriminalize homosexuality and on the other hand some religious leaders who want homosexuality to remain a criminal offence.

Conclusion

I am of the view that religion is an important variable in the homosexual debate in Malawi. Although Malawi is not a religious country, most Malawians are religious and they have a voice in the socio-political affairs of the country. Malawi's two prominent religions: Christianity and Islam have denounced the homosexual phenomenon and advised the government not to legalize homosexuality. In so doing, the religious community is exercising its due rights to the freedom of conscience, religion, belief and thought as accorded by Section 33 of the Constitution of Malawi. Therefore, it is illegal and unconstitutional for gay-rights campaigners to call for silence on the part of the religious community or qualify their statements on gay issues as hate speech.¹⁰³

Anti-Homosexuality Responses in the Debate

This section of the study analyzes anti-homosexual responses in the homosexuality debate in Malawi.

From Non-Governmental Organizations (NGOs)

Martha Kwataine, former director of the Malawi Health Equity Network (MHEN) contradicted Dr Mary Shawa's observations that homosexuals are a health concern in Malawi. She described health rights advocacy for gays and lesbians as a "bizarre and strange phenomenon," since such matters are anathema to Malawian culture. Hence, MHEN was not prepared to do anything to advocate for health rights of Malawian homosexuals.¹⁰⁴

¹⁰³ Voice of Micah, "Gay-Rights Campaign and the Invention of Religious Radicalism in Malawi," *The Lamp*, (March 2016).

¹⁰⁴ Richard Chirombo, "Homosexuality is not a Health Rights Issue, Says Malawi Health Equity Network," *Zachimalawi*, (28.2.2011).

Martha Kwataine argued that there was no relationship between "gays and health rights." In other words, homosexuality was not a health issue. Thus, MHEN expressed its support for President Bingu wa Mutharika's anti-gay stance.¹⁰⁵

From the Malawi Law Society

The Malawi Law Society (MLS) leveled a ferocious criticism on the Justice Minister, Ralph Kasambara, for single handedly suspending the anti-gay laws. John Gift Mwankhwawa, MLS president argued that the suspension amounts to insulting the powers of the legislature. It is not only unconstitutional and illegal but also an infringement of separation of powers between the executive and legislature. This means any minister can wake up and start suspending any law.¹⁰⁶

Mwankhwawa further advised that if government felt that the laws are not appropriate then the option was either to take the matter to Parliament for repeal or challenge it through a constitutional court which could authorize the suspension after an application.¹⁰⁷

Mwankhwawa further lashed at government for playing politics on a constitutional issue and building a culture of impunity. By issuing a moratorium, the executive wants to please the donors but is abdicating its duties to enforce the laws which were put up through the legislature.¹⁰⁸

From the Court

Young Pastors Coalition of Malawi (YPCM) sought an injunction at the Mzuzu High Court to suspend the anti-gay laws moratorium in Malawi. George Kadzipatike, the lawyer who represented the pastors argued that the government's suspension of the anti-homosexuality law was illegal:

¹⁰⁵ Ibid.

¹⁰⁶ "Malawi Law Society Faults Kasambara on Easing Anti-Gay Laws," *Nyasa Times*, (7.11.2012).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

Our main arguments have been that the executive branch of government, the minister of justice, the director of public prosecutions and Malawi police service do not have the mandate to change the position of any law in the country... only the Malawi parliament has the mandate to change or suspend any law in the country. And having regards to the penal code which prohibits acts of homosexuality in the country, that Act of Parliament was not amended or repealed in any way by the Malawi parliament..So it is still in force and has to be applied.¹⁰⁹

Judge Dingiswayo Madise of the Mzuzu High Court granted the injunction on February 9 2016:

That an order of injunction be and hereby granted restraining the 2nd and 3rd respondents [DPP, Malawi Police], their agents, servants or whosoever from continuing to cease arresting and prosecuting suspects of homosexual offences or offences relating to carnal knowledge against the order of nature as prohibited by section 153 of the Penal Code, Chapter 7:01 of the Laws of Malawi.¹¹⁰

In other words, Judge Dingiswayo Madise ordered the Malawi Police Service and the Director of Public Prosecutions to continue arresting and prosecuting gays and lesbians who commit homosexual offences in Malawi. He further faulted Malawi Police Service for dropping the homosexual charges against Cuthbert Kulemela and Kelvin Gonani.¹¹¹ The High Court order technically brings an end to the moratorium on sodomy laws in Malawi.

Judge Dingiswayo Madise of the Mzuzu High Court sustained an injunction obtained against anti-gay laws moratorium in May 2016, arguing that the interest of justice tilt towards sustaining the order of injunction until a constitutional court review of the anti-homosexual laws is made.

¹⁰⁹ www.voanews.com/a/malawi-court...anti-gay-laws/3188056.html, (11.10.2016).

¹¹⁰ Deogratus Mmana, "Court Throws Out Moratorium on Gays," *The Times Group*, (10.2.2016).

¹¹¹ Collins Mtika, "Malawi Court Rejects Moratorium on Gays: Police can Arrest Homosexuals," *Nyasa Times*, (10.2.2016).

He observed that a panel of three constitutional court judges can be able to adjudicate over the matter.¹¹²

From Malawi Parliament

The passing of a new Marriage, Divorce and Family Relations Bill by the Malawi Parliament in mid-February 2015 entrenched the government's antigay stance. The bill does not recognize same-sex marriage since it clearly states that marriage is a union between two adults of opposite gender or sex. Moreover, the bill understands sex as one's status at birth; basically, acknowledging male and female.¹¹³

On 17 April 2015, the Marriage, Divorce and Family Relations Law came into force and banned all same-sex marriages and unions. While the law was praised for increasing the minimum age of heterosexual marriages from 16 to 18, it was condemned on three grounds: (1) the exclusion of homosexual couples, (2) its language stating that one's gender is assigned at birth, and (3) drawing comparisons of gay sex to rape and sexual harassment.¹¹⁴

The law also stipulates that the court will grant an order for divorce or separation if the marriage of a man and a woman has irretrievably broken down because one spouse has been convicted of having sexual intercourse with a person of the same- sex.¹¹⁵

In response, human rights campaigners have argued that the new marriage law is homophobic by not recognizing same-sex couples. Also, the bill has used an archaic definition of marriage which is no longer relevant to the current status quo. Furthermore, in reinforcing a heterosexual ideal, the law denies gay couples the chance to express their

¹¹² Judith Moyo, "Malawi Court Dismisses Anti-Gay Law Moratorium," *Nyasa Times*, (12.5.2016).

¹¹³ Thom Chiumia, "Malawi Marriage Bill Spurn Same-Sex Liasons," *Nyasa Times*, (17.2.2015).

¹¹⁴ Naith Payton, "Malawi's New Anti-LGBT Law comes into Effect," *Pink News*, (17.4.2015).

¹¹⁵ Thom Chiumia, "Malawi Marriage Bill Spurn Same-Sex Liasons," *Nyasa Times*, (17.2.2015).

love via formal marriage. Human rights activists argue that the laws violate Malawi's constitutional protections for citizens regardless of their sex, race, tribe, or religion.¹¹⁶

I am of the view that the government of Malawi demonstrated that it is determined to criminalize homosexuality through the passing of the Marriage, Divorce and Family Relations Bill into law.

From the Law Commission

The Law Commission observes that the scheme of the new Marriage, Divorce, and Family Relations Law on the various types of marriages in Malawi presupposes a heterosexual union. The commission was aware of instances where persons who have undergone "sex change" surgery and the legal debates that ensue in those cases when it comes to the capacity to marry.¹¹⁷

The Law Commission maintains the position at common law as regards the sex of a person; that sex is determined at birth; hence, sex for purposes of marriage, will continue to be regarded as one's sex at birth. Such a determination of sex at birth avoids any potential problems caused by transsexuals or persons who have undergone "sex-change" surgery later in life from marrying a person who, prior to that sex-changing surgery, was of the same sex as them.¹¹⁸

From Traditional Leaders

Tradition is one of the factors that make the legalization of homosexuality in Malawi difficult.¹¹⁹ Below are some of the comments by traditional leaders on homosexuality.

¹¹⁶ Ibid.

¹¹⁷ Marriage, Divorce, and Family Relations Bill 2015, The Malawi Gazette Supplement, dated 30 January 2015, containing a Bill, www.malawi24.com, (23.8.2015).

¹¹⁸ Ibid.

¹¹⁹ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

Inkosi ya Makosi M'mbelwa V of Mzimba argued that traditional leaders are custodians of tradition and culture and should not be sidelined when dealing with the issue of homosexuality in Malawi.¹²⁰ He argued that if chiefs will be left out, the US envoy has failed to listen to what 17 million Malawians are saying on the issue of homosexuality.¹²¹ The remarks were made in view of the planned visit to Malawi by a US envoy on homosexuality to meet with only pro-gay Civil Society Organizations and government officials.

Inkosi ya Makosi M'mbelwa V disclosed that the following chiefs will be on the panel to meet the US envoy on homosexuality: Senior Chief Lundu (Chikhwawa), Lukwa (Kasungu), Inkosi Gomani (Ntcheu), T/A Chikumbu (Mulanje), and T/A Tsabango (Lilongwe).¹²²

T/A Kuntaja of Blantyre appealed to the government to let traditional leaders handle the issue of homosexuality rather than parliamentarians. He noted that some Civil Society Organizations promoting homosexuality in Malawi are doing it for selfish gains whilst fully knowing that it is against Malawian culture.¹²³

Senior Chief Kaomba urged the government not to let parliament change its laws on homosexuality arguing that it is against our culture. He made these remarks in reaction to government's moratorium of anti-gay laws.¹²⁴

From Religious Groups

Religion is one of the main factors that make the legalization of homosexuality in Malawi difficult.¹²⁵ This section of the study analyses how

¹²⁰ "Malawi Faith Leaders, Chiefs Gang up against US Envoy on Homosexuality," *Nyasa Times*, (20.1.2016).

¹²¹ Ibid.

¹²² Ibid.

¹²³ "T/A Kuntaja Speaks against Legalizing Homosexuality," *Nyasa Times*, (24.5.2012).

¹²⁴ Raphael Tenthani, "Malawi Suspends Homosexual Laws," *BBC News*, (5.11.2012).

¹²⁵ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

the religious community in Malawi has responded to the on-going homosexuality debate.

The Response of the Episcopal Conference of Malawi (ECM)

The Episcopal Conference of Malawi (ECM) is the permanent institution of the Roman Catholic Bishops of Malawi which promotes the greater good which the Catholic Church offers humankind, through forms and programs which are fittingly adapted to circumstances of the time and place.¹²⁶

In March 2013, Malawi Catholic bishops condemned homosexuality in a pastoral statement saying it is a sinful practice which should not be tolerated in a God-fearing nation like Malawi. The Church maintained that while the homosexual orientation is disordered, it is not sinful in itself. However, once a person with this orientation or indeed a person without this orientation indulges in homosexual acts such acts must always be judged objectively evil and totally unacceptable. This teaching is clearly based on scripture.¹²⁷

The Bishops noted that the promotion of homosexuality threatens the existence of marriage as designed by God... It must be noted that defending marriage as a unit of man and woman should not be the responsibility of churches alone but also of conscientious civil authorities and any serious member of society.¹²⁸

As a loving mother and reflecting the unconditional love of God, the church understands that for most homosexual persons, their condition is a trial. As such "they must be accepted with respect, compassion, and sensitivity."¹²⁹ This statement shows that the church is not promoting homophobia but exercises tolerance to homosexuals. Moreover, the church is prepared to minister to persons who are homosexuals.

¹²⁶ www.episcopalconferencemalawi.wordpress.com, (21.3.2016).

¹²⁷ "Malawi Catholic Bishops Clash with Rights Campaigners over Homosexuality," *Nyasa Times*, (4.3.2013).

¹²⁸ Ibid.

¹²⁹ Ibid.

However, gay rights campaigners argued that Malawians should be left to debate the issue of homosexuality without anyone imposing their views to influence others. They further observed that matters of state and church should be separated and the Catholic bishops cannot impose their beliefs on the society. Malawi is a secular state and the constitution is the supreme law.¹³⁰

I am of the opinion that the reaction of the gay rights campaigners to the Catholic pastoral letter on homosexuality identifies two main key players in the homosexual debate in Malawi: gay rights campaigners and the church or the religious community.

The Episcopal Conference of Malawi (ECM) in its Pastoral Letter released on Sunday, 13th March 2016, described the government's stand on homosexuality as "very unfortunate."¹³¹

The pastoral letter made six observations on homosexuality: (1) it strongly condemned same-sex marriages arguing that family is the central social institution that must be protected, supported and strengthened by all means and not be undermined; (2) It backed those who have faulted the Malawi government for putting a moratorium on laws governing homosexual acts; (3) It accused the government of bowing down to pressure from the donor community, international bodies and local human rights' campaigners; (4) It described government's action as a betrayal on the part of those in power to sell our country to foreign practices and tendencies contrary to the will of God because of money; (5) It called upon all Catholics and people of good will, to stand up for what is morally right today in the face of the highly funded campaign for homosexual rights and unions; and (6) It condemned in strongest terms those inciting violence against homosexuals and those guilty of homosexual acts or unions.¹³²

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

I am of the view that the ECM made a constructive contribution to the homosexual debate in Malawi in two ways: (1) it faulted the government on the way it is handling the issue of legalization of homosexuality in Malawi, and (2) demonstrated tolerance to the gay community by condemning people who are inciting violence to the gay community. This is a very welcome development at a time when some people had called for the gays in Malawi to be killed.¹³³

Archbishop Thomas Luka Msusa of Blantyre Archdiocese of the Roman Catholic Church and chairperson of the Episcopal Conference of Malawi advised all Catholic Members of Parliament (MP's) to defend the Christian family unit, which is composed of a man and a woman, against evil forces promoting sinful alien homosexual lifestyle.¹³⁴ I am of the opinion that Archbishop Msusa is being proactive by taking the homosexual debate to Catholic parliamentarians in anticipation of a possibility for a parliamentary review of the laws that criminalize homosexuality.

Catholic bishops in Malawi met with President Peter Mutharika at the Kamuzu Palace on 8th January 2016, where they advised him to resist the pressure for legalizing homosexuality in Malawi.¹³⁵ Archbishop Thomas Luka Msusa argued that the controversy and undue pressure on LGBTI rights are alien to most Malawians and are being championed by foreigners. Therefore, the president should not bow down to foreign pressure on LGBTI rights but should follow what the Malawi constitution says.¹³⁶ I am of the opinion that the Catholic bishops warned President Peter Mutharika that if his government legalizes homosexuality it will lose popular support because most Malawians are against the phenomenon.

¹³³ Maurice Nkawihe, "Kill Gays in Malawi, Demands Msonda: 'Devil has no Rights,'" *Nyasa Times*, (3.1.2016).

¹³⁴ "Malawi Catholic MP's Urged to Reject Gays, Defend Family in Parliament," *Nyasa Times*, (31.1.2015).

¹³⁵ Wanga Gwede, "Malawi Catholic Bishop Rejects K 50 000 Cash Hand-out from State House: Talk Tough on Gays," *Nyasa Times*, (10.1.2016).

¹³⁶ Sam Chunga, "Bishops Warn APM over Homosexuality Laws," *The Nation*, (10.1.2016).

The Response of the Malawi Council of Churches (MCC)

The Malawi Council of Churches is an umbrella organization for 25 Christian Churches and 20 Para-church organizations in Malawi. The Council was established in 1942 to facilitate human transformation following the image of Christ, promoting holistic development, and fostering unity, peace, justice and love among the human race.¹³⁷

The Malawi Council of Churches (MCC) organized a consultative workshop for national church leaders and other stakeholders to address the controversial issue of homosexuality at Sand n' Sand Holiday Resort in Mangochi from the 15th to 18th March 2010. Three major resolutions were agreed: (a) to hold that homosexual acts and or practices are a violation of the revealed truth of the complementarity of males and females (Genesis 1:27, 28; 2:18-25); (b) to uphold the current penal code provision that criminalizes homosexual acts and or practices, in as far as they bring about reform; (c) to hold that the Church should treat practicing and self-affirming homosexuals as sinners just as any other persons engaged in persistent unrepentant acts of sin. They should be loved and ministered to. The Church therefore must accompany the homosexuals in their struggle to transform their lives.¹³⁸

I am of the opinion that the homosexual debate in Malawi demands both a theological and a ministerial response by the church. Instead of denying that there are homosexual members in the churches, the church needs to be proactive by clarifying its theological position on homosexuality and formulate corresponding strategies of ministering to homosexual people.

MCC released a press statement which reacted to Britain's threat to cut aid to Malawi because of not upholding gay rights. The British government said it had cut aid of about £ 19 million to Malawi because of the

¹³⁷ www.danchurchaid.org/.../malawi/malawi-council-of-churches, (21.1.2016).

¹³⁸ Richard Chirombo, "Reiterating Malawi Council of Churches' Position on Homosexuality," *Zachimalawi*, (3.1.2012).

conviction and sentencing of the gay couple: Steven Monjeza and Tiwonge Chimbalanga to fourteen years imprisonment.¹³⁹

MCC argued that the West should not be allowed to use its financial power to force Malawi to accept homosexuality. The churches are praying that donors should refrain from using aid to reinforce a negative lifestyle in poor countries like Malawi... The Council understands and believes that Malawi needs aid, and therefore asks that homosexuality should not be used as a benchmark to penalize and put to risk the lives of millions of innocent Malawians.¹⁴⁰

MCC further argued that Britain's move of tying aid to homosexuality which is an alien and immoral culture denigrates human dignity, a contradiction to God's teaching, a threat to the family unit which was institutionalized by God, a contradiction to Malawi's rich traditions and culture. Therefore, legalization of homosexuality constitutes human rights violation whereby the poor people are denied an opportunity to realize their full potential.¹⁴¹

I am of the opinion that the Malawi Council of Churches played its prophetic role of rebuking the Western donors who want to use their economic power to force poor African nations to legalize homosexuality. Gay rights have become a form of neo-imperialist agenda whereby Western nations want to force their values on the whole globe without considering the cultural contexts of other nations. Hence, the MCC stance should be applauded rather than allowing the rich Western nations to play god in the life of the poor.

In November 2012, Malawi Council of Churches categorically expressed surprise following media reports that government has suspended anti-gay laws. MCC observed that as much as the Church does not promote prosecution of homosexuals, the Church also does not condone homosexual practice at all costs. Contrary to the view that promoting homosexuality helps curb HIV/Aids, the Church is very concerned that

¹³⁹ "Malawi Churches against Aid Tied to Homosexuality," *Nyasa Times*, (12.10.2011).

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

the promotion of homosexual relationships is in itself the promotion of HIV/Aids transmission. Moreover, there is no law that denies homosexuals the right to medical access and treatment. Therefore, citing lack of access to the health care system in Malawi cannot be a basis for legalizing homosexuality in Malawi.¹⁴² It should also be noted that gay rights campaigners might strengthen their case by providing substantive evidence or documentation of Malawians who were denied health care services for being homosexuals.

MCC observed that their duty is to promote the larger good. An individual right should therefore not threaten the rights of the larger community. Our society has safeguard mechanisms that ensure the God given rights should go together with God given responsibilities. Responsibilities as given by God far much out-weigh the homosexuality 'minority' right in this regard.¹⁴³

I am of the view that MCC's position reflects the consensus within the major Christian traditions that the rights identified in most human rights declarations are worthy of theological support; but, when those rights are in conflict with God's revealed will in Scriptures, then the church should stand by God's will.

Some churches which are members of the Malawi Council of Churches have responded to the on-going homosexual debate in Malawi. These include Anglican Communion of Malawi (ACM) and CCAP Nkhoma Synod.

The public debate on homosexuality in Malawi started in the Anglican Communion of Malawi with the rejection of Rev Nick Henderson as the bishop of Lake Malawi Diocese due to allegations that he was gay.¹⁴⁴

Reverend Dr Nicholas Paul Henderson's election to the bishopric of the Lake Malawi Diocese of the Anglican Church on 29 July 2005 brought

¹⁴² "Malawi Churches React on Issues Affecting Country," *Nyasa Times*, (9.11.2012).

¹⁴³ Ibid.

¹⁴⁴ "Malawi Rejects 'Pro-Gay' Bishop," *BBC News*, (2.12.2005).

controversy to the church. Conservative members challenged the election and the Anglican Church of Central Africa (ACCA), which is composed of bishops from Malawi, Botswana, Zambia and Zimbabwe overturned the election in December 2005. Archbishop Bernard Malango, who led ACCA at that time, alleged that Rev Dr Nick Paul Henderson was not of sound faith because of his support for LGBTI rights. He went on to argue that African culture does not approve same-sex relationships. Later, a four-year struggle by laity and priests to overturn the ACCA's decision ensued. On one instance, one priest, Canon Rodney Hunter, died in Nkhota-kota as a result of food poisoning for his involvement in the homosexual debate within the Anglican Communion in Malawi.¹⁴⁵ Finally, the matter was settled when Henderson asked his supporters to agree to the election of the Venerable Francis Kaulanda as bishop of the Lake Malawi diocese. Kaulanda had been one of Henderson's sabbatical study priests.¹⁴⁶

Archbishop Bernard Malango was informed that Rev Dr Nick Henderson was single and shares his vicarage with a male lodger, who is an organist at one of his churches in London. This led to the suspicion that Rev Henderson was in a homosexual relationship with the organist because of his advocacy for the gay and lesbian movement.¹⁴⁷ However, there was no substantive evidence pointing to the fact that Rev Dr Nick Henderson was indeed gay.

Nkhoma Synod of CCAP, which is a member of the Malawi Council of Churches (MCC), issued a pastoral letter on 24 January 2016 warning its members not to accept gay and abortion laws which the government intends to enact, but speak out against them wherever they find themselves. The Synod further advised its members to continue praying against the legalization of same-sex marriages because it brings God's wrath on society.¹⁴⁸ I am of the opinion that Nkhoma Synod of the CCAP

¹⁴⁵ Father Martin Kalimbe, Zomba Theological College, Zomba, (18.1.2016).

¹⁴⁶ "Malawi Rejects 'Pro-Gay' Bishop," *BBC News*, (2.12.2005).

¹⁴⁷ www.anglian-information-archive.org, (5.7.2015).

¹⁴⁸ Sam Makaka, "CCAP Nkhoma Synod Pastoral Letter Warns on Gays, Abortion: 'Malawi should not Legalize Sin,'" *Nyasa Times*, (25.1.2016).

is exercising its prophetic role by denouncing the vice of homosexuality but also giving a theological clarification on homosexuality to its members.

The Evangelical Association of Malawi (EAM) is an umbrella body 58 Evangelical Churches and 50 Christian Organizations in the country.¹⁴⁹ The EAM gave its response to the homosexual debate in Malawi by releasing a press statement on same-sex marriages which articulated the following points:

Affirmed that the only God ordained marriage is between a man and a woman (Gen 1:27-28; 2:18, 24; Mat 19:1-7; 1 Cor 7:2),

The Malawi constitution criminalizes homosexual practices,

Strongly condemns the promotion and practice of same sex marriages even as we demonstrate compassion and pastoral care for those members of our society involved in such behaviours,

Urged the Malawi Government, Parliament and all those entrusted with the duty to govern, to jealously guard and protect the interests and values of the Malawian people whom they represent; Parliament to be steadfast in representing the citizens of this nation by not bowing down to alien practices which undermine our very cultural values to the core.

Therefore, we urge the State President, Cabinet and Members of Parliament not to repeal the penal code offences against same sex marriages,

Urged the Malawi Government to call for a national referendum on same sex marriages to put the matter to rest so that the principles of democracy prevail.¹⁵⁰

I am of the opinion that EAM's press statement affirms that the prophetic proclamation of the church on human rights and political reality is imperative. Moreover, EAM constructively contributed to the

¹⁴⁹ www.aeafrica.org/afroscope/view.htm?id=15, (21.3.2016).

¹⁵⁰ Ibid.

homosexual debate in Malawi by advocating a pastoral ministry, structured and designed to minister to the marginalized of society, including gays and lesbians. Thus, the church should not condemn the gay community in Malawi but should minister Christ's love to those who are struggling with issues of sexual orientation.

The Episcopal Conference of Malawi and the Evangelical Association of Malawi jointly conducted a Pro-life and Pro-family March called "Citizens' March for Life and Family" on 6th December 2016, a call to celebrate, defend and reaffirm truths about Human Life and the Family enshrined in our laws, culture and beliefs.¹⁵¹

ECM and EAM argued that human life and the family were under direct attack through the "Termination of Pregnancy Bill" and those pushing for the legalization of homosexual practices and unions. Therefore, they called upon all Malawians of goodwill to stand up for life by saying NO to the culture of death as manifested in the "Termination of Pregnancy Bill." Human life must be respected, preserved, and defended from the moment of conception. Furthermore, they called upon all Malawians of goodwill to stand up for the institution of marriage and family. Marriage between a man and a woman must be protected, supported and strengthened and not undermined. "We say NO to gay and lesbian unions!"¹⁵²

According to the churches, family life was under attack by "the agents of culture of death" and "adversaries of family" who had launched a hugely funded campaign for the killing of unborn children and legalization of homosexuality.¹⁵³

According to Rev Matilda Matabwa, the Secretary General of Malawi Assemblies of God, a member of Evangelical Association of Malawi, the

¹⁵¹ www.ecmmw.org/new/2016/11/29/announcing-citizens-march-for-life-and-family/ (7.12.2016).

¹⁵² Ibid.

¹⁵³ Judith Moyo, "All Set for Catholics, Evangelicals anti-abortion March," *Nyasa Times*, (6.12.2016).

Citizen's March for Life and Family was not a demonstration against anyone or any entity, but rather a celebration of life and family.

We would like to emphasize here that the march is about a public celebration, defence and reaffirmation of the following truths and facts about life and family as enshrined in our laws, culture, beliefs and value system as a nation: life begins at conception; life is sacred and must be safeguarded with extreme care from conception; life must be preserved and protected from conception; sex and marriage is naturally between man and woman; and man and woman union is the naturally ideal and complete basic unit of a society.¹⁵⁴

CCAP Nkhoma Synod General Secretary Vasco Kachipapa appealed to all Malawians to participate in this march as a clear expression of their love for the country as well as defending their values and faiths.¹⁵⁵

But some rights-based organisations in the country fear the demonstrations may culminate into violating the rights of minority groups since the march also targeted same-sex marriages. The CSOs include Centre for Development of People (CEDEP), Centre for Human Rights and Rehabilitation (CHRR) and the Malawi Network of Religious Leaders living with HIV/Aids (Manerela).¹⁵⁶

The CSOs argued that the faith community is wrong to call for nationwide protests on the issues, saying they have no mandate to "dictate the feelings of everyone in the country."

To begin with, Malawi is a secular state, and as such, all views should be considered equally. The framers of our Constitution were cognisant of the importance of protecting views of minority or secular views.¹⁵⁷

However, Mankhumbo Munthali, who is the National Secretary of the Ethics, Peace and Justice Commission, and the Secretary of the National

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

Taskforce for Life and Family March, said that the CSO's were entitled to their opinion despite their remarks being misplaced.

We respect the opinion of Cedep. However, as a self-acclaimed human rights defender Mr. Gift Trapence must be in a better position to know that right to life is the first amongst all human rights. You cannot talk about economic rights before talking about life. We are talking about life being at stake. In fact, we were supposed to respond to this yesterday. What the churches are doing now is to stand up for the right of unborn children whose plight are under immense danger from a highly funded campaign of the killing of unborn children. Both the Universal Declaration on Human Rights (UDHR) and the UN Convention on the Rights of the Child (CRC) recognizes the right of the child before and after birth. The church will always speak for the voiceless.¹⁵⁸

The Citizen March for Life and Family was a nationwide demonstration which took place in the four cities of Lilongwe, Blantyre, Mzuzu and Zomba; and all 28 Districts in Malawi. In Lilongwe, the March had two converging starting points: Route 1, started from Area 18 St. Patricks' Catholic Parish through Area 18 Round About to City Center. Route 2, started from Presbyterian Church of Malawi (PCM) opposite Kamuzu College of Nursing and next to Central Medical Stores through Central Hospital Round About, Bisnowaty Filling Station to City Center. The two groups converged at Parliament Building and presented the petition.¹⁵⁹

In Blantyre, the March started from Blantyre Old Town Hall via Highway to Blantyre Civic Centre. The petition was presented to the Chief Executive Officer. In Mzuzu, the March started from Katoto Secondary School Ground via Mzuzu Highway to Mzuzu City Assembly where the petition was read and presented.¹⁶⁰

¹⁵⁸ Ibid.

¹⁵⁹ [www.ecmmw.org/new/2016/11/29/announcing-citizens-march-for-life-and-family/\(7.12.2016\)](http://www.ecmmw.org/new/2016/11/29/announcing-citizens-march-for-life-and-family/(7.12.2016)).

¹⁶⁰ Ibid.

In Zomba, the March had two converging starting points: Route 1, started from Mpunga Market via Shoprite to the DC's Office; Route 2, started from Chinamwali Market via Zomba Zero to the DC's Office. The petition was presented to the DC.¹⁶¹

But Minister of Information and Communications Technology, Rev Malison Nda, who is also spokesman for the government, denied that there was an Abortion Bill ready for debate in the National Assembly.

The truth of the matter is that the Law Commission has developed a Report and made recommendations to Government to adopt a new law on abortion... Currently, the law on abortion is governed by the Penal Code. Sections 149, 150, 151 and 243 of the Penal Code prohibit termination of pregnancy except where the life of the mother is threatened. This is the status of the law... The Penal Code underwent review and the Law Commission came up with its Report in 2000. The Commission recommended to Government to empanel another special Law Commission to review comprehensively the sections dealing with termination of pregnancy after clearly acknowledging the need to do so... The Report, which is the subject of the present controversy, is the result of the work of this other Commission which focused on issues of unsafe termination of pregnancy. This Report is yet to be submitted to Cabinet through the Minister of Justice for Cabinet's consideration. This has not been done at this stage. It is important to emphasize that Reports of the Law Commission are merely recommendations to Government. It is the prerogative of Cabinet to adopt or reject any recommendations originating from the Law Commission.¹⁶²

The clergy insinuated that God was not giving sufficient rains to Malawi because of propagating same-sex liaisons. This observation was made during an interdenominational prayer meeting for the rains at Bingi

¹⁶¹ Ibid.

¹⁶² Green Muheya, "Malawi Govt Says there is no Abortion Bill as Hundreds Join 'March For Life,'" *Nyasa Times*, (6.12.2016).

International Conference Center (BICC), Lilongwe.¹⁶³ The identification that homosexuality results in natural disasters like drought was a recurrent theme that emerged from the findings of this study on the effects of homosexuality.¹⁶⁴

Sheikh Dr Salmin Omar Idrussi, the Secretary General of Muslim Association of Malawi (MAM), called for the execution of gays in February 2014. He argued that homosexuality in Malawi should remain criminalized and that it should be given a maximum sentence of death instead of a 14-year jail term. He further intimated that although Malawi is regarded as a secular state, but the country is blessed with God fearing citizens who cannot afford to deviate from God's commandments for the sake of pleasing others who practice homosexual acts.¹⁶⁵

Ambassador Sophie Kalinde of the Malawi Human Rights Commission (MHRC) condemned Sheikh Dr Salmin Omar Idrussi's homophobic statement by citing Section 20 of the Constitution of the Republic of Malawi. The Commission categorically emphasized the importance of sustaining an environment in Malawi in which the human rights of all people are respected without any distinction whatsoever, on the basis of gender, sex, age, social origin or other status.¹⁶⁶

Sheikh Dr Salmin Omar withdrew his statement and offered a clarification. He argued that he made his statement in response to the media on the issue of homosexual practices. Besides, his statement was not intended to incite ill-feelings against any category of people, but rather he only pointed out the provisions of the Quran on homosexuality and made reference to the beliefs and teachings in the Quran and in Islam,

¹⁶³ Wanga Gwede, "God not giving Malawi Sufficient Rains because of Sexual Immorality - Clergy," *Nyasa Times*, (11.1.2016).

¹⁶⁴ Interview at Bija Mbale Village, Mzimba, (12.10.2015).

¹⁶⁵ Zawadi Chilunga, "Kill the Gays! Penalty Proposed by Muslim Association of Malawi," *Nyasa Times*, (17.2.2014).

¹⁶⁶ Ambassador Sophie Kalinde, "Promotion and Protection of the Rights to Equality and Non-Discrimination and Human Dignity: Condemnation of Homophobia," Press Statement, *MHRC*, (26.2.2014).

just as other religions or denominations have made their stand on the issue known to the public.¹⁶⁷

Nonetheless, the Commission called upon members of the general public across all religious groups, sects and beliefs to ensure that the respect of the fundamental rights to equality and non-discrimination, and human dignity guaranteed in the Republic of Malawi Constitution, are upheld at all times, and that an environment for the protection of human rights is sustained. Duty bearers, particularly leaders, are under a duty to ensure that their conduct, actions or omissions do not amount to creating an environment that may contribute to homophobic tendencies. Instead, leaders must entrench the values of tolerance, love and non-judgmental approaches that various religious and social beliefs stand for, and therefore consciously avoid utterances which may fuel an atmosphere of homophobia.¹⁶⁸

The Response of the Public Affairs Committee (PAC)

The Public Affairs Committee (PAC), an influential inter-religious body, advised President Joyce Banda to tread carefully on her desire to legalize homosexuality in Malawi. Rev Maurice Munthali, PAC's spokesperson said that the church's position on the matter is clear:

Homosexuality is not only unbiblical, it is also un-Malawian. So since she has just pronounced it, we, the Christian community will consult with our Muslim counterparts to analyze it and re-issue the statement regarding the matter.¹⁶⁹

The Public Affairs Committee (PAC) reacted to government's concession that it had suspended homosexual laws because of pressure from donors. PAC argued that the government's mandate was to serve

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Sacramento Bee, "Malawi unlikely to Axe anti-Gay Laws," *AP*, (28.9.2012).

Malawians and not donors: Germany, Britain and the United States of America.¹⁷⁰

I am of the opinion that the government should be decisive on the sensitive issue of homosexuality by keeping its priorities in focus: serving the interests of Malawians first rather than prioritizing the interests of donors. Most Malawians are against the idea of legalizing homosexuality.

Homosexuality and Health

Dr Mary Shawa, the Secretary for Nutrition, HIV and AIDS in the President's office argued for the need to incorporate a human rights approach in the delivery of HIV and AIDS to gays.¹⁷¹ She bemoaned the fact that Malawi had registered a 25 percent HIV and AIDS prevalence rate among gays.¹⁷² Rodney Chalera from CEDEP expressed worry over an increased HIV prevalence rate among the gay community in Malawi. He cited a 2014 study conducted in Mangochi, Mzuzu, Chikhwawa, and Lilongwe. The study indicated that among the 2364 population of the gay community in these districts, the HIV prevalence rate stands at 24.9%.¹⁷³ These two observations demonstrate that there are some health risks for people who practice homosexuality.

Physical Health Consequences for Practicing Homosexuality

The Gay and Lesbian Medical Association asserts that men having sex with other men (MSM) leads to greater health risks than men having sex

¹⁷⁰ Owen Khamula, "PAC tells Government to Serve Malawians not Donors, Reject Gays," *Nyasa Times*, (26.12.2015).

¹⁷¹ Mavuto Banda, "Gay Rights Way to Fight AIDS in Malawi-Official," *Reuters*, (15.9.2009).

¹⁷² Ibid.

¹⁷³ Owen Khamula, "High Prevalence Rate among Malawi Gay Community Worry CEDEP," *Nyasa Times*, (30.3.2016).

with women¹⁷⁴ not only because of promiscuity but also because of the nature of sex among men. Wilcox summarizes the danger as follows:

Male homosexual behaviour is not simply either 'active' or 'passive,' since penile-anal, mouth-penile, and hand-anal sexual contact is usual for both partners, and mouth-anal contact is not infrequent. . . Mouth-anal contact is the reason for the relatively high incidence of diseases caused by bowel pathogens in male homosexuals. Trauma may encourage the entry of micro-organisms and thus lead to primary syphilitic lesions occurring in the anogenital area ... In addition to sodomy, trauma may be caused by foreign bodies, including stimulators of various kinds, penile adornments, and prostheses.¹⁷⁵

Some gay men sexualize human waste, including the medically dangerous practice of coprophilia, which means sexual contact with highly infectious faecal wastes. This practice exposes the participants to all of the risks of anal-oral contact and many of the risks of anal-genital contact.¹⁷⁶

Gay sexual practice of "fisting" refers to the insertion of a hand or forearm into the rectum, and is far more damaging than anal intercourse. Inner body tissues can be torn along with incompetence of the anal sphincter. The result can include infections, inflammation and, consequently, enhanced susceptibility to future STDs. Twenty-two percent of homosexuals in one survey admitted to having participated in this practice.¹⁷⁷

There is an extremely high rate of parasitic and other intestinal infections documented among male homosexual practitioners because of oral-anal contact. In fact, there are so many infections that a syndrome

¹⁷⁴ The Gay and Lesbian Medical Association (GLMA) published a press release entitled "Ten Things Gay Men Should Discuss with their Health Care Providers," (17.7.2002).

¹⁷⁵ R.R. Wilcox, "Sexual Behaviour and Sexually Transmitted Disease Patterns in Male Homosexuals," *British Journal of Venereal Diseases*, 57(3): (1981), pp. 167-169.

¹⁷⁶ Karla Jay and Allen Young, *The Gay Report: Lesbians and Gay Men Speak Out About Sexual Experiences and Lifestyles*, New York: Summit Books, 1979.

¹⁷⁷ *Ibid.*

called "the Gay Bowel" is described in medical literature.¹⁷⁸ Gay bowel syndrome constitutes a group of conditions that occur among persons who practice unprotected anal intercourse, anilingus, or fellatio following anal intercourse.¹⁷⁹ Although some women have been diagnosed with some of the gastrointestinal infections associated with "gay bowel," the vast preponderance of patients with these conditions are men who have sex with men.¹⁸⁰

Anal intercourse is the sine qua non of sex for many gay men. The end result is that the fragility of the anus and rectum, along with the immunosuppressive effect of ejaculation, make anal-genital intercourse a most efficient manner of transmitting HIV and other infections. The list of diseases found with extraordinary frequency among male homosexual practitioners as a result of anal intercourse is alarming: Anal Cancer, Chlamydia trachomatis, Cryptosporidium, Giardia lamblia, Herpes simplex virus, Human immunodeficiency virus, Human papilloma virus, Isospora belli, Microsporidia, Gonorrhea, Viral hepatitis types B & C, and Syphilis.¹⁸¹

Psychological Health Consequences

The mental health of homosexuals and lesbians does not have the same bell-curve as the rest of society. The mental health issues are not due to social pressure and rejection by the majority of society who considers homosexuality to be aberrant.¹⁸² 73% of the psychiatrists in the American Psychiatric Association who responded to a survey said that they thought that homosexual men were less happy than others. 70% said

¹⁷⁸ Henry Kazal, et al., "The Gay Bowel Syndrome: Clinicopathologic Correlation in 260 Cases," *Annals of Clinical and Laboratory Science*, 6(2): (1976), pp. 184-192.

¹⁷⁹ Glen E. Hastings and Richard Weber, "Use of the Term 'Gay Bowel Syndrome,'" reply to a letter to the editor, *American Family Physician*, 49(3): 582 (1994).

¹⁸⁰ E.K. Markell, et al., "Intestinal Parasitic Infections in Homosexual Men at a San Francisco Health Fair," *Western Journal of Medicine*, 139(2): (August, 1983), pp. 177-178.

¹⁸¹ Anne Rompalo, "Sexually Transmitted Causes of Gastrointestinal Symptoms in Homosexual Men," *Medical Clinics of North America*, 74(6): (November 1990); pp. 1633-1645.

¹⁸² Matt Slick, Is Homosexuality Dangerous to Society? <https://carm.org/is-homosexuality-dangerous>, (6.5.2016).

they believed that the homosexuals' problems were due to personal conflicts rather than to social stigmatization.¹⁸³

A 2007 Adult Psychiatric Morbidity Survey on the rates of mental disorder was conducted among 7,403 adults living in the UK investigating rates of depression, anxiety, obsessive compulsive disorder, phobia, self-harm, suicidal thoughts, and alcohol and drug dependence found that they were significantly higher in homosexual respondents. The study reported that:

Our study confirms earlier work carried out in the UK, USA and Holland which suggests that non-heterosexual people are at higher risk of mental disorder, suicidal ideation, substance misuse and self-harm than heterosexual people.¹⁸⁴

Recent studies show that homosexuals have a substantially greater risk of suffering from psychiatric problems than do heterosexuals. We see higher rates of suicide, depression, bulimia, antisocial personality disorder, and substance abuse.¹⁸⁵

Homosexual lifestyle eventually leads to the death of society:

If we produce no children, our society will die. There won't be enough people to support the infrastructure, agriculture, medical needs, socio-economic development, etc. That is a fact. So, common sense would tell us that homosexuality is a danger to society since it cannot produce children to further the society.¹⁸⁶

Therefore, in view of the effects of homosexual behaviour on both individual and societal level, people should be warned of these negative consequences rather than presenting homosexual behaviour as at par with heterosexual behaviour. I think the Malawian campaign for gay

¹⁸³ Harold I. Lief, "Sexual Survey Number 4: Current Thinking on Homosexuality," *Medical Aspects of Human Sexuality* 2 (1977), pp. 110-111.

¹⁸⁴ Chakraborty, A. et al. "Mental Health of the Non-heterosexual Population of England," *British Journal of Psychiatry*, Vol. 198, (February 2011), pp. 143-48.

¹⁸⁵ www.narh.com/docs/whitehead.html (7.5.2016).

¹⁸⁶ Matt Slick, "Is Homosexuality Dangerous to Society?" <https://carm.org/is-homosexuality-dangerous>, (6.5.2016).

rights has not done enough in highlighting these problems associated with homosexuality. It is imperative for any honest effort at achieving a harmonious co-existence of both heterosexual and homosexual people in Malawi to highlight the negative consequences of homosexual behaviour. This will enable those who engage in such behaviour to be aware of the associated risks and make informed choices accordingly.

Homosexuality and Donor Aid to Malawi

A donor culture has been created in Malawi since the colonial days. In this respect, both the government and NGOs receive and use donor money to implement their projects. However, the adverse effect of such a donor culture is that it relinquishes the government's responsibility in ensuring service delivery to its citizens. In this case, the many donor funded projects permit the government to divert tax money elsewhere.¹⁸⁷ Therefore, western countries and donor agencies have used donor aid as a tool for manipulating the homosexuality debate in Malawi.

Western Countries threatened to withdraw Aid

President Barack Obama directed US agencies including the US State Departments and the US Agency for International Development (USAID), to use foreign aid to assist gays and lesbians who are facing human rights violations. He also ordered US agencies to protect vulnerable gay and lesbian refugees and asylum seekers. The US government will also consider how countries treat gays and lesbians when making foreign aid decisions.¹⁸⁸

Hilary Clinton, the former US Secretary of State followed up the presidential memorandum at the UN Human Rights Council in Geneva on 6 December 2011. She told an audience of diplomats in Geneva that gay rights are human rights. She further said that gay people are born into,

¹⁸⁷ Emmie Chanika, John L. Lwanda, Adamson S. Muula, "Gender, Gays and Gain: The Sexualized Politics of Donor Aid in Malawi," *Africa Spectrum* 48, (2013), pp. 89-105.

¹⁸⁸ "Malawi must Respect Same-Sex Rights or Lose US Aid," *Nyasa Times*, (7.12.2011).

and belong to every society in the world. Being gay is not a western invention but a human reality.¹⁸⁹

About \$350 million of US financial aid to Malawi was rescinded due to amendments in the country's penal code criminalizing sodomy. Dr Hetherwick Ntaba, Presidential Spokesperson argued that in as far as we cannot run away from the fact that we need their aid it is absurd for those countries to be forcing the country to embrace immoral cultures. We are a sovereign state and we deserve to be treated as such, aid or no aid.¹⁹⁰

In July 2011, Germany announced it would withhold half of the \$33 million in foreign aid promised to Malawi because of the criminalization of homosexuality and the restriction of press freedom. Press reports also indicated that The Global Fund rejected Malawi's application for \$560 million due to its laws regarding sodomy.¹⁹¹

In November 2011, David Cameron, the British Prime Minister stated that Commonwealth member states refusing to decriminalize homosexuality risk losing British aid.¹⁹² Critics pointed out to Cameron's naivety in approaching the issue of homosexuality in Africa. His emphasis on homosexuality was a short-sighted policy and inadvertently discriminatory. A country either respects human rights or not. Countries that respect all other rights but not those of homosexuals cannot and must not be considered as respecting human rights.¹⁹³

Aidan Liddle, Head of the Southern Africa Section at the British Foreign and Commonwealth Office (CFO) clarified Cameron's statement that London had not cut its aid to Malawi, but its redirecting it to the communities rather than giving it to the Malawi Government... what we stopped doing is giving that aid to government as budgetary support,

¹⁸⁹ Ibid.

¹⁹⁰ Katherine Nikas, "\$ 350 Million Rescinded: Aid to Malawi Dependent on Complicity in Homosexual Rights Agenda," *Lifesite News.com*, (5.8.2015).

¹⁹¹ Ibid.

¹⁹² "Cameron's Statement on Aid Could Worsen Human Rights and Governance in Malawi," *Nyasa Times*, (8.11.2011).

¹⁹³ Ibid.

instead we have switched the aid to NGOs and communities. Moreover, Britain's aid is not tied to the specific issue of homosexual rights since there is no link between the specific issue of homosexual rights and aid.¹⁹⁴

Why did the UK, which signed bilateral diplomatic agreements with the Malawi Government, decide to side-line the government and redirect its aid to NGO's? Civil society is allegedly part of neo-liberal ideological project, something to be fostered as an alternative to the state. By strengthening African civil society, the neo-liberals aim to undermine further the African state, and thus leave Africa even more open to domination by Western forces.¹⁹⁵ In this way, the UK government saw that it could be easier to implement the gay-rights agenda through some NGO's rather than the government which was adamant to the introduction of gay rights in Malawi. Consequently, the NGOs were condemned for becoming a puppet of the Western donors and unpatriotic to Malawi's development agenda.

The Millennium Challenge Corporation (MCC) to withhold Aid to Malawi

The Millennium Challenge Corporation (MCC) decided to withhold aid due to recent penal code amendments that explicitly criminalized homosexual acts as well as concerns related to press freedoms. The MCC and the Government of Malawi worked in close partnership to develop a Compact investment at reforming the power sector, while investing in energy infrastructure improvements. MCC's investment is expected to generate \$2.4 billion in income for more than 5 million Malawians.¹⁹⁶

MCC argued that criminally punishing LGBTI individuals under laws prompted them to initiate the investigation required for suspension or

¹⁹⁴ "Cameron's Statement on Aid Could Worsen Human Rights and Governance in Malawi," *Nyasa Times*, (8.11.2011).

¹⁹⁵ Paul Gifford, *African Christianity: It's Public Role*, London: Hurst, 2001.

¹⁹⁶ Katherine Nikas, "\$ 350 Million Rescinded: Aid to Malawi Dependent on Complicity in Homosexual Rights Agenda," *Lifesite News.com*, (5.8.2015).

termination of the Compact. MCC made it clear to the Government of Malawi that laws criminalizing homosexual conduct are inconsistent with human rights obligations and MCC's indicators.¹⁹⁷

It was only after 5 November 2012 that these stringent measures by Western donors were relaxed, after the then president, Joyce Banda, suspended all laws criminalizing homosexuality. Mark Toner, the Acting Spokesperson in the US Department of State, subsequently announced:

The United States commends the bold actions taken by Malawi's President Joyce Banda since her inauguration last month. In her State of the Nation address, President Banda articulated a positive vision for Malawi's future. Fulfilling this vision would put Malawi on sounder financial footing, invest more in the potential of its people, and better protect the human rights of its citizens. As Malawi's largest donor, the United States remains committed to working with President Banda and all Malawians to achieve these goals.¹⁹⁸

The reaction of Western governments and donor organizations gives the strong impression that the respect of human rights, especially LGBT rights, is a prerequisite for any possible development aid to Africa. Thus, donor aid is one of the factors that will influence African countries to legalize homosexuality despite the wishes of the majority of their citizens.

Malawi Government Receives Donor Aid to Promote Homosexuality

Despite government's derogatory language towards donors on homosexual rights and allegations that NGOs are getting funding for promoting gay rights, President Bingu wa Mutharika's administration got donor aid for implementing gay activities.¹⁹⁹

¹⁹⁷ Ibid.

¹⁹⁸ M Toner, "President Joyce Banda's First Six Weeks," U.S. Department of State, 21 May 2012," www.state.gov, (19.10.2015).

¹⁹⁹ "Bingu's Government Receiving Money on the Backs of Gays," *Nyasa Times*, (24.2.2012).

In February 2012, the US Embassy in Lilongwe said that over \$70 million of US Government bilateral funding to Malawi in 2010 went to fight against HIV/Aids and that a fraction of that money went to MSM activities. Moreover, Benjamin Canvas, US Embassy Public Sections Officer confirmed to the Nation Newspaper that the US and other donors were currently supporting the Malawi Government to conduct a national population size estimation of homosexuals in Malawi. The survey was designed to include three cities: Lilongwe, Blantyre, and Mzuzu and three rural districts: Chikhwawa, Mangochi and Nkhata-Bay.²⁰⁰

Dr Hetherwick Ntaba, Presidential Spokesperson, said that sanctioning the survey does not make homosexuality legal in Malawi. He further argued that government cannot be blamed for hypocrisy in receiving donor money for promoting gay rights because although prostitution is illegal in Malawi, the government ensures that prostitutes are not discriminated against in terms of health services.²⁰¹ I am of the view that as much as the government condemns homosexual practice in Malawi, it is also benefiting from the same practice by receiving donor aid.

Global Fund Aid

In February 2015, the Malawi Government requested funding amounting to \$3888888 from the Global Fund to be used for mitigating the spread of HIV/AIDS among same sex liaisons. CEDEP commended the government for embracing homosexuality as expressed in its willingness to make interventions in the spread of HIV/AIDS among the homosexuals.²⁰² Dr Jean Kalirani, the former Minister of Health, said that homosexuality was still illegal in Malawi despite the government requesting funds from the Global Fund. She further warned that anyone

²⁰⁰ "Bingu's Government Receiving Money on the Backs of Gays," *Nyasa Times*, (24.2.2012).

²⁰¹ Ibid.

²⁰² Thom Chiumia, "Gay Activist Hail Malawi Government for Homosexuality Acceptance: Calls for Commitment," *Nyasa Times*, (27.2.15).

found engaging in homosexual activities will be arrested and prosecuted.²⁰³

In October 2015, Kalekeni Kaphale, Malawi's Attorney General, defended government's move to request for \$ 3,888,888 from the Global Fund for HIV and Aids interventions targeting 40,000 Men who have Sex with Men (MSM). He argued that homosexuals will not be discriminated against when accessing healthcare despite the existing antigay law... All people whether they are gays or not are at complete liberty to get full treatment, as they also pay taxes just like any other Malawian.²⁰⁴ However, the Attorney General did not provide any evidence demonstrating that gays and lesbians are being discriminated from accessing health care services in Malawi. I am of the opinion that the AG issued the statement in order to woo donor money by simply dancing to their tune.

Peter Kumpalume, the Minister of Health, urged the gay people to be honest with healthcare workers, particularly when discussing treatment for HIV. He assured that health workers will live up to their ethics of "keeping confidentiality of their patients."²⁰⁵ However, these remarks are just a political rhetoric which does not reflect the situation on the ground. Government officials have failed to provide substantive evidence proving that a Malawian citizen has been denied health service based on his or her sexual orientation.

On 20 October 2015, the Global Fund gave a record US \$ 380 million grant to Malawi government to facilitate the fight against HIV/Aids, TB and Malaria. The grant is Global Fund's largest allocation ever given to any country or institution. President Peter Mutharika and Mark Dybul,

²⁰³ Green Muheya, "Same-Sex Liasons Still Illegal in Malawi - Minister," *Nyasa Times*, (6.3.2015).

²⁰⁴ Wanga Gwede, "Malawi Gays have Right to Health Care, AG," *Nyasa Times*, (23.10.2015).

²⁰⁵ Ibid.

Global Fund's Executive Director, witnessed the signing of the funding agreement at Kamuzu Palace in Lilongwe on 20 October 2015.²⁰⁶

However, one social media commentator argued that Global Fund has given Malawi the funds because President Peter Mutharika had agreed to some conditions of which one is the promotion of LGBT rights in Malawi.²⁰⁷ Wanga Gwede contends that this fact was validated when Oliver Colvie, a British Member of Parliament, reacted to the arrest of a gay couple: Cuthbert Kulemela and Kelvin Gonani in Lilongwe on 7 December 2015.²⁰⁸ Oliver Colvie wondered that whilst President Peter Mutharika had successfully applied for the Global Fund aid for LGBTI health services, there were some elements within the government that were no longer following the 2012 moratorium on anti-gay laws.²⁰⁹ In other words, the Malawi Government was not supposed to arrest and charge the gay couple in view of the funding agreement which it signed with the Global Fund.

The Malawi government's outreach to MSM can only be understood as a matter of survival during times of economic hardship. Malawi has in recent years struggled to qualify for the Global Fund money because proposal evaluators said it was not doing enough to support the gay population.

Homophobic Practices against Homosexuals in Malawi

Homophobia encompasses a range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as

²⁰⁶ "Global Fund Gives Malawi Record \$ 380 Million Grant: Deepen Partnership to Fight HIV, TB, and Malaria," *Nyasa Times*, (22.10.2015).

²⁰⁷ "Comment Number 36, Global Fund Gives Malawi Record \$ 380 Million Grant: Deepen Partnership to Fight HIV, TB, and Malaria," *Nyasa Times*, (22.10.2015).

²⁰⁸ Wanga Gwede, "Two Men Nabbed for 'Gay Sex' Act Charged in Malawi," *Nyasa Times*, (9.12.2015).

²⁰⁹ Thom Chiumia, "Malawi Anti-Gay Laws 'Still on Suspension,' German says 'Gay Rights are Human Rights,'" *Nyasa Times*, (18.12.2015).

being lesbians, gays, bisexuals, and transsexuals.²¹⁰ It can be expressed as antipathy, contempt, prejudice, aversion, or hatred. It may be based on irrational fear and is sometimes related to religious beliefs.²¹¹ It can also be observed in critical and hostile behaviour such as discrimination and violence on the basis of sexual orientations that are non-heterosexual.²¹² Thus, this section of the book will evaluate homophobic incidences in Malawi.

Malawi's First Gay Couple Victimized through Homophobia

The news of Steven Monjeza and Tiwonge Chimbalanga's gay engagement induced a pandemonium that was marked by appeals to the cultural, traditional and religious values of the country not to be undermined. In general, there was condemnation of Monjeza and Chimbalanga in the press, in religious circles, among traditional leaders and by government officials.²¹³

Steven Monjeza and Tiwonge Chimbalanga were subjected to homophobia during their trial. They were denied bail, supposedly for their own safety, and were forced to endure dire conditions in jail. Angry

²¹⁰ Maurianne Adams, Lee Anne Bell, Pat Griffin, *Teaching for Diversity and Social Justice*, Routledge, 2007. Because of the complicated interplay among gender identity, gender roles, and sexual identity, transgender people are often assumed to be lesbian or gay because transgender identity challenges a binary conception of sexuality and gender, educators must clarify their own understanding of these concepts. ... Facilitators must be able to help participants understand the connections among sexism, heterosexism, and transgender oppression and the ways in which gender roles are maintained, in part, through homophobia.

²¹¹ Mark McCormack, *The Declining Significance of Homophobia*, Oxford University Press, 2013.

²¹² Claire M. Renzetti, Jeffrey L. Edleson, "Homophobia," *Encyclopedia of Interpersonal Violence*, New York: Sage Publications, 2008.

²¹³ Joseph Mulenga, "How Sociology Enriches Human Rights: The Case of Malawi's First Openly-gay Couple," in Frans Viljoen (ed.), *Beyond the Law: Multi-disciplinary Perspectives on Human Rights*, Pretoria: University Law Press, 2012.

residents and relatives from Chirimba Township said they would not allow them to return home if they are set free.²¹⁴

Steven Monjeza was pressurized by his relatives to leave Tiwonge and seek a heterosexual relationship instead. His uncle, Khuliwa Dennis Monjeza, had expressed determination to prevent the two men reuniting. Others warned Chimbanga not to come back to the village, threatening that they would deal with him.²¹⁵ Consequently, Monjeza no longer wanted to be associated with the homosexuality saga. He said:

I have had enough ... I was forced into the whole drama and I regret the whole episode. I want to live a normal life ... not a life where I would be watched by everyone, booed and teased.²¹⁶

Therefore, I am of the opinion that the gay couple separated because of the homophobic environment.

Homophobia against Cuthbert Kulemela and Kelvin Gonani

Homophobia was further exemplified in the comments of Malawians when reacting to the US envoy's plea to Malawi government to drop the gay sex charges against Cuthbert Kulemela and Kelvin Gonani.²¹⁷ For instance, the following three comments on *Nyasa Times* are homophobic to the two suspects and those who were calling for their unconditional release:

All organizations supporting gayism, humbly stop existing in Malawi and go to USA, otherwise mob justice will take its course. We will burn your offices. America you should stop mingling in our affairs with immediate effect, just as we have never mingled in yours. We run our nation with our laws and not yours.²¹⁸

²¹⁴ Godfrey Mapondera, David Smith, "Gay Couple who Married Faces Harsh Prison Sentences," *The Guardian*, (14.5.2010).

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Wanga Gwede, "US Envoy Urges Malawi to Drop Charges for Gay Couple," *Nyasa Times*, (16.12.2015).

²¹⁸ Ibid.

This comment serves at least four purposes: first, it shows that Malawi does not have any room for accommodating homosexuality. Second, it suggests that people will take the law into their own hands if the law enforcement agency fails to arrest the gays. Third, it asserts Malawi's sovereignty and denounces Western imperialism which is imposing sexual minority rights in Africa. Fourth, it demonstrates that Malawi as a democratic country followed the rule of law; therefore, the arrest was not unlawful but consistent with the constitution.

Nyasa Times publish the names of all high profile gays in Malawi. Mob justice will take its course if the police release them. Tizingowotcha tikagwira (we will burn them once caught) and wipe them out of this country.²¹⁹

This comment directly incites violence against LGBTI people in Malawi by using the media. A similar case was reported when David Kato, a prominent gay rights activist, was murdered in his house after a Ugandan tabloid named "*Rolling Stone*" had published an article with the names, addresses, and photographs of 100 people it claimed were gay or lesbian, accompanied by the headline, "Hang them."²²⁰

Why did police arrest these gays in the first place? You should have let the mob that surrounded their house to stone them to death. We don't have a place, not even a prison cell for these idiots in Malawi.²²¹

This comment faulted the law enforcement agency for arresting the suspects and wished for mob justice to have been executed. This means that people are willing to go to the extent of not observing the rule of law as a means of curbing the vice of homosexuality. Furthermore, it exemplifies total rejection of homosexuality in Malawi.

²¹⁹ Wanga Gwede, "US Envoy Urges Malawi to Drop Charges for Gay Couple," *Nyasa Times*, (16.12.2015).

²²⁰ www.nydailynews.com/news/world/david-kato-ugandan-gay-activist, (19.12.2015).

²²¹ Wanga Gwede, "US Envoy Urges Malawi to Drop Charges for Gay Couple, Comment Number 53," *Nyasa Times*, (16.12.2015).

Ken Msonda's 'Kill the Gays' Remarks

Ken Msonda, a spokesperson and administrative secretary of the former ruling People's Party (PP) posted on his Facebook page that gays and lesbians are worse than dogs. They are sons and daughters of the devil.... Arresting them won't solve the problem because they are being released on bail. The best way to deal with them is to kill them.... It is pathetic to see our media houses parading these dogs on TV and newspapers hiding behind human rights, but, the devil has no rights.²²²

Although Ken Msonda won the popular acclaim from many Malawians for insinuating that gays should be killed; CEDEP and CHRR launched a lawsuit against Msonda for inciting violence against gays and lesbians in Malawi which contravenes Section 124 of the Constitution.²²³ He defiantly challenged to meet the human rights campaigners in court over a "satanic, doggish, and demonic" act of homosexuality.²²⁴ Mary Kachale, Director of Public Prosecution (DPP) applied for the discontinuance of the case and the High Court discharged Msonda.²²⁵

I am of the opinion that the case was discontinued because the government was afraid that once the gay rights campaigners win the case against Msonda, it would mean that Malawi has legalized homosexuality. Nevertheless, Msonda's remarks can be considered the epitome of homophobia in Malawi because he called for the total annihilation of the LGBTI community in Malawi.

The Media and Homophobic Practices in Malawi

The media in Malawi has played an important role in either sustaining a homophobic environment or fostering an accommodative stance. Of interest to this study is an article by George Kasakula, a former editor of

²²² Maurice Nkawihe, "Kill Gays in Malawi, Demands Msonda: Devil has no Rights," *Nyasa Times*, (3.1.2016)

²²³ Wanga Gwede, "Defiant Msonda Challenges Court Action over Call to Kill Gays in Malawi," *Nyasa Times*, (9.1.2016).

²²⁴ Ibid.

²²⁵ Green Muheya, "Msonda's 'Kill the Gays' Case Discontinued: SG Says Malawi not Ready to Change Anti-Gay Laws," *Nyasa Times*, (21.1.2016).

the Weekend Nation. He argued that we should not bother ourselves with the sexuality of some people whom we think are abnormal, because they do not physically injure anybody or mean harm to anyone.²²⁶ Kasakula's argument is double-sided. First, he captures the homophobic attitude that the general populace holds that gays are abnormal. Second, he appeals for accommodation of homosexuality within Malawian society because it is a private issue that is not harmful to anyone.

Kasakula wrote another article which is also double-sided in presenting both homophobia and tolerance:

Most Malawians find homosexuality abhorrent. My Christian beliefs tell me it is an act that goes against the laws of nature. God destroyed the cities of Sodom and Gomorrah because of this. Sodom gave its name to the abhorrent act the law classifies as sodomy. But it is not my duty to take the moral high ground on this issue. Neither is it for my secular government. This is the duty of churches and mosques, among others.²²⁷

Firstly, Kasakula presents a tolerant view to homosexuality by arguing that it is not the duty of any individual or government to judge people based on their sexual orientation. Secondly, he presents a homophobic view of homosexuality in three ways: (1) by recognizing that most Malawians regard homosexuality as abhorrent, (2) relating his Christian belief which informs him that homosexual practice is against the order of nature, and (3) giving the religious community the sole responsibility of judging the morality of homosexuality. It is in this regard that homophobia is fuelled because Malawi's two most prominent religions i.e. Christianity and Islam had already condemned the gay couple and encouraged the government to maintain the laws that criminalize homosexuality.²²⁸

²²⁶ George Kasakula, *Weekend Nation*, (3.7.2010).

²²⁷ George Kasakula, *Weekend Nation*, (14.5.2011).

²²⁸ "Malawi Churches React on Issues Affecting Country," *Nyasa Times*, (9.11.2012).

The Case of a Male (Gay) Prostitute

On 24 April 2016, police in Lilongwe rescued Limbani Kukhase, a gay prostitute, from an angry mob that was beating him after discovering that he was a male gay prostitute.²²⁹ Kukhase went to a drinking joint at Kagwa in Area 49 whilst putting on a female make-up and dressing. A drunken man who did not realize that Kukhase is male procured him for sex only to discover that he is male whilst they were about to have sex. The man shouted for help and community members inflicted mob justice on Kukhase.²³⁰ The police arrested Kukhase and later released him without charging him and argued that they had picked him up for his own safety because some community members were baying for his blood.²³¹ This incident demonstrates the extent of homophobia in Malawian communities.

Homophobia in Malawi's Entertainment Industry

Robert Chiwamba's popular poem entitled "Mudzafa Imfa Yowawa"²³² which is aired on many radio stations in Malawi exemplifies homophobia. "Mudzafa Imfa Yowawa" literally means "you will die a painful death." In this poem, Chiwamba exemplifies homophobia by intimidating both advocates and practitioners of homosexuality in Malawi.

However, the Malawi Communication Regulatory Authority (MACRA)²³³ and gay rights campaigners in Malawi have not expressed any concern yet over this form of hate speech.

²²⁹ Owen Khamula, "Malawi Police Save Male Prostitute from Mob Justice," *Nyasa Times*, (26.4.2016).

²³⁰ Ibid.

²³¹ Ibid.

²³² Robert Chiwamba told an interviewer that poetry is subjective, and is one best way of expressing oneself over a number of issues that concern an individual. Therefore, the poem "Mudzafa Imfa Yowawa" is a result of his personal homophobia against homosexuality. "I had to think of an exciting way of presenting my feelings to the public." (Mandy Pondani, "Robert Chiwamba Steals Show at Mzuzu Poetry Festival," *Times Media*, 7.10.2014); Chiwamba released his debut poetry album with 31 numbers in October 2013.

²³³ www.macra.org.mw, (20.12.2015).

Robert Chiwamba further released two new poems denouncing homosexuality: the first, "*Takana Mathanyula*" (We refuse homosexuality) projects the general public's view against homosexuality. It also gives arguments against legalizing homosexuality in Malawi.²³⁴

The second, "*Zikomo Kwambiri*" (Thank You Very Much) is a poem which adores African leaders who have stood firm against homosexuality i.e. Robert Mugabe, Yoweri Museveni, Uhuru Kenyatta, Yahya Jammeh and the late Bingu wa Mutharika.²³⁵ I am of the view that Robert Chiwamba, a popular Malawian poet, is creatively using the entertainment industry as a platform for homophobic utterances.

Lucius Banda cut short his music performance at Zithere Pano in Mangochi on the eve of Christmas. He posted on his Facebook page that he had problems to continue with the show when he saw two men in the audience intimately kissing and engaging each other. He argued that he is not musically funded by any Western country. His donors are God the Father, the Son and the Holy Spirit, who provide funding with a no sodomy condition attached.²³⁶

Black Missionaries, Malawi's reggae music kings, backed Lucius Banda in denouncing homosexuality in Malawi.²³⁷ These incidents indicate that the homosexual debate in Malawi has proliferated into many sectors of society including the entertainment industry. The entertainment industry has recently become a battle ground where the homosexual battle is being fought. Nevertheless, caution should be taken that these homophobic utterances should not degenerate into violence which would be very detrimental to the LGBTI community which is a minority.

²³⁴ "Download Robert Chiwamba's Two Hard Hitting Poems against Homosexuality in Malawi," *Malawian Watchdog*, (25.1.2016).

²³⁵ Ibid.

²³⁶ Yamikani Simutowe, "Malawi Music Guru 'felt Dirty:' Gay Men Kissing Forces Lucius to End Show," *Nyasa Times*, (27.12.2015).

²³⁷ Zawadi Chilunga, "Black Missionaries Add Voice to Lucius Antigay Stance: Mathanyula has no Place in Malawi," *Nyasa Times*, (5.1.2016).

Blackmail, Extortion and Homosexuality in Malawi

Blackmail involves threats to disclose information that a person believes to be potentially damaging to the victims' reputation or safety. Extortion involves obtaining money, property or services from another person through, for example, intimidation or threats of physical harm.²³⁸

Narratives of LGBT people provide a glimpse of the various forms of blackmail and extortions which are perpetrated in Malawi. For instance, Wiseman Chibwezo described a story of Samson, who is not only blackmailed by a sexual partner who demands a car for his silence, but by his wife, who finds out about the affair and threatens to publicize it unless given half of his monthly salary.²³⁹

In November 2014, Malawi Police arrested Ishmael Makhuludzo, 29 years old, a CEDEP officer, on allegations that he had a sexual relationship with a 17 year old boy at Luwinga Township in Mzuzu. The suspect allegedly sexually assaulted the boy after a night drink out. Sergeant Martin Bwanali, Mzuzu Police Public Relations Officer said that the suspect was charged with sodomy contrary to Section 153 of the Penal Code.²⁴⁰

Later it transpired that the boy had an affair with Makhuludzo. A police report explained that the two had been in a relationship since 2012. Makhuludzo was paying for the boy's school fees and mentoring him to pursue university education at Chancellor College. The teenager, who sat for the Malawi School Certificate of Education (MSCE) at Katoto Secondary School in 2014, said that his boyfriend, a graduate of Chancellor College, always offered him brotherly advice on how to succeed

²³⁸ James Lindgren, "Unravelling the Paradox of Blackmail," *Columbia Law Review* 84.3 (1984), pp. 670-717.

²³⁹ Wiseman Chibwezo, "Blackmail among Gay People in Malawi," in: Ryan Thoreson and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, 2007.

²⁴⁰ "Malawi Police Arrest CEDEP Officer for Gay Sex," *Nyasa Times*, (5.11.2014).

in school.²⁴¹ Then suddenly Makhuludzo withdrew the financial support which he was giving the boy. Consequently, the frustrated boy then decided to blackmail Makhuludzo by claiming that he had been raped. Police then re-arrested Makhuludzo but he pleaded not guilty to sodomy charges.²⁴²

I am of the opinion that the boy used homosexuality as a tool for either harassing his former boyfriend or coercing him to continue supporting him after their relationship was over.

President Peter Mutharika was blackmailed during the 2014 tripartite campaign period that he was gay.²⁴³ Mutharika denied the gay allegations and explained that he was formerly married to Christophine G. Mutharika from the Caribbean who died of Cancer. Together they had three children, two girls and a boy: Monique, Moyenda, and Mahopela, who are all lawyers in the U.S.²⁴⁴ Mutharika officially got married to Gertrude Hendrina Maseko soon after winning the 2014 tripartite elections.²⁴⁵

I am of the opinion that this political blackmail was aimed at tarnishing his image in Malawian society which is generally against legalizing homosexuality; thereby, affecting the number of people which would have voted for him. Also, the best way for Peter Mutharika to save his image was to get married and not remain single. Thus, he did exactly what was expected of him.

In conclusion, I am of the view that perpetrators of blackmail and extortion use the need for secrecy and lack of legal system support to manipulate their victims by demanding money and other favours. Also, for the

²⁴¹ "Malawi Boy, Gay Rape Suspect had an Affair- Police Report," *Nyasa Times*, (27.11.2014).

²⁴² Ibid.

²⁴³ Green Muheya, "Mutharika Denies being Gay amid Rumours about his Sexuality," *Nyasa Times*, (26.4.2014).

²⁴⁴ Ibid.

²⁴⁵ Zawadi Chilunga, "Mutharika, Gertrude declared married: Malawi First Couple," *Nyasa Times*, (21.6.2014).

individual victims, blackmail and extortion are psychologically, financially, and often physically traumatizing. They often feel they have nobody to turn to, and are intimidated and disempowered at the same time that they are stripped of their money or possessions.

Conclusion

The chapter has demonstrated that the on-going homosexual debate in Malawi hinges on the laws that criminalize homosexuality: Section 137A, Section 153, Section 154, and Section 156 of the penal code. On one hand, proponents of homosexuality are using the concept of human rights to argue for the legalization of homosexuality in Malawi since the country is a signatory to at least thirty-two international human rights treaties.²⁴⁶ The issue of human rights is discussed in chapter 5. On the other hand, critics of homosexuality in Malawi are using the cultural, moral, and religious arguments to denounce homosexuality. Religious Scriptures on homosexuality are dealt with in chapter 6.

Therefore, I argue that sexual minority rights will be granted in Malawi once the laws that criminalize same-sex behaviour have been repealed. But, the government is not yet decided on whether to repeal the laws as one way of pleasing the donors; thereby, project a good human rights image for the country or to maintain the laws that criminalize homosexuality thereby pleasing the majority of Malawians who are against the homosexuality. The next chapter 3 discusses whether or not homosexuality has been prevalent in Malawi.

²⁴⁶ Republic of Malawi, Report to the African Commission on Human and People's Rights: Implementation of the African Charter on Human and Peoples Rights 1995-2013 and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women 2005-2013.

Chapter 3: The Prevalence of Homosexuality in Malawi

A discussion on the homosexuality debate in Malawi was presented in chapter 2. It was demonstrated that the homosexuality debate in Malawi is not about the existence or non-existence of the phenomenon. It is about the acceptability or non-acceptability of an already existing phenomenon in Malawian society. Therefore, this chapter discusses whether or not homosexuality has been prevalent in Malawi.

Prevalence of Homosexuality in Malawi

The prevalence of homosexuality in Malawi demonstrates that homosexuality is not only a conceptual or theoretical issue but it is a practical issue present in contemporary Malawian society.

Homosexual Terms and Expressions in Malawi

Malawian vernacular languages have got terms that explain the phenomenon of homosexuality e.g. *Mathanyula* and *Cha Matonde* in Chichewa.¹ Furthermore, findings of this study revealed that there are some words that are used in the homosexual discourse but do not necessary translate the term "homosexuality." Several vernacular words were captured during interviews which reflected the sentiment that homosexuality is an abomination, abhorrent, or repugnant. For instance, in Chichewa words like *mwikho* (*embarrassment*),² *malodza* (*appalling*),³ and *Malaulo* (*horror*)⁴ were used by the respondents to show that homosexuality destroys the Malawian culture. Also, the Lomwe word *maravi* (*disgusting*) is used to describe similar sentiments

¹ "A Manual on Human Rights and Sexual Orientation in Malawi" Itech Corp Designs and Publishers, 2011.

² Interview at Robeni Village, T/A Chikumbu, Mulanje, (7 10.2015).

³ Interview at Nthiramanja Village, Chonde, Mulanje, (6.10.2015).

⁴ Ibid.

on homosexuality.⁵ Based on these findings, I argue that the phenomenon of homosexuality has been prevalent in Malawi only that it had some negative connotations.

This study has found that the prevalence of homosexuality in Malawi is shown in the fact that most people have a general understanding of homosexuality. Most participants in this study explained that they understood homosexuality to mean "a man having sexual intercourse with another man or a woman having sexual intercourse with a fellow woman." This statement was captured in the vernacular languages of the tribes under study. For instance, in Sena: "*Kusembana amuna okhaokha pena akazi okhaokha.*"⁶ In Yao: "*Ulombera wachalume, ulombera wachakongwe.*"⁷ In Chichewa: "*Kugonana kwa amuna okhaokha, kugonana kwa akazi okhaokha.*"⁸ In Tumbuka: "*Wanarume kugonana wanarume pera na wanakazi kugonana na wanakazi pera.*"⁹

I have concluded that most people know about the two major categories of homosexuality: gay and lesbian. Most participants in the study did not know the other categories of homosexuality i.e. bisexual, transgender, and intersex.

The Criminalization of Homosexuality Shows its Prevalence in Society

I am of the opinion that the criminalization of homosexuality in Malawi suggests that the phenomenon of homosexuality is prevalent in Malawi. The Malawi Penal Code has the following provisions in connection with homosexuality: Section 137A, Section 153, Section 154, and Section 156.¹⁰ I am of the view that it is useless to have these laws if the phenomenon of homosexuality is non-existent in Malawian society. The adoption of the anti-homosexual laws entails that homosexuality was

⁵ Saikonde Bertha, Village Headwoman, Chonde, Mulanje, (6.10.2015).

⁶ Interview at Ngabu, Chikhwawa, (12.10.2015).

⁷ Interview at Mpagaja Village, T/A Nsomba, Blantyre, (3.10.2015).

⁸ Interview at Chikungu Village, Nanjiri, Lilongwe, (26.10.2015).

⁹ Interview at Bija Mbale Village, Mzimba, (12.10.2015).

¹⁰ www.icrc.org/ihl-nat.../Constitution%20Malawi%20-%20EN.pdf, (15.12.2015).

practiced even during colonial times dating back to 1930 when such laws were codified in the Nyasaland constitution of 1930.¹¹

The Homosexual Population in Malawi

One of the indicators of the prevalence of homosexuality in Malawi is that there is already an existing homosexual population in the country. For instance, the Country Coordinating Mechanism (CCM) conducted a seven-site Men who have Sex with Men (MSM) HIV prevalence, socio-behavioural and population size estimation study. The 2014 study revealed that Malawi has an MSM population size of 1.84 percent or 38,784 homosexuals.¹² The study was conducted in the following districts: Lilongwe, Blantyre, Mzuzu, Mangochi, Nkhata-Bay, Chikhwa-wa, and Mulanje.¹³

The homosexual population in Malawi is seen to have increased due to three reasons. First, the government's imposition of a moratorium on laws that criminalize homosexuality has served as a motivational factor for people to practice homosexuality without fear of being arrested and prosecuted.¹⁴ Second, the influence of the sexual minority rights lobby by both local and international organizations has positively contributed towards the progression of homosexual practice in Malawi. Third, the role of the media in raising awareness on issues of homosexuality in Malawi has contributed to the prevalence of the practice.¹⁵

¹¹ Emmie Chanika, John L. Lwanda and Adamson S. Muula, "Gender, Gays and Gain: The Sexualized Politics of Donor Aid in Malawi," *Africa Spectrum*, Vol 48, No 1, 2013.

¹² Suzgo Khunga, "Malawi Embraces Homosexuals?" *The Nation*, (26.2.2015).

¹³ Ibid.

¹⁴ Colin Stewart, "it's Official: No more Malawi Arrests under Anti-gay Laws", [http://76crimes.com/2014/07/14/its-official-no-more-malawi-arrests-under-anti-gay-laws/\(10.7.2015\)](http://76crimes.com/2014/07/14/its-official-no-more-malawi-arrests-under-anti-gay-laws/(10.7.2015)).

¹⁵ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

Prevalence of Homosexuality in Contemporary Malawian Communities

This section of the book presents a discussion on the narrated experiences of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people who are living in various communities in Malawi. I have included this section in order to demonstrate that the homosexual debate in Malawi is not only on a theoretical level, but involves real lives of gays and lesbians who are living in Malawi. The sensitive nature of this section entails strict confidentiality; hence, names of participants are not disclosed.

Cohabitation of Same-sex Couples in Malawi

Cohabitation involves two people who are not married living together in a romantic relationship or sexually intimate relationship on a long-term or permanent basis without formally registering their relationship as a marriage.¹⁶

Findings of this study revealed that the prevalence of cohabitation among LGBTI people in Malawi is high. Two contributing factors were discovered for the increase in cohabitation in Malawi. First, parental and society disapproval of gay and lesbian marriage leads LGBTI people to cohabit secretly without disclosing their relationship to their parents and society at large. Second, the Malawi government has not yet legalized homosexual marriage; hence, there is no formal way of registering a gay or lesbian marriage in Malawi. Consequently, LGBTI couples have found it easy to cohabit and share their lives without formal marriage procedures.

Reasons for Cohabitation

Findings of this study identified three reasons for cohabitation: love, commitment and a desire for settlement as the key motivating factors

¹⁶ Lawrence A. Kurdek, "What do we know about Gay and Lesbian Couples?" *Current Directions in Psychological Science* 14.5 (2005), pp. 251-254.

for cohabitation. Moreover, cohabitation was portrayed as a natural process of their relationship.

Although there were different stories for all participants who reported that their cohabitation was natural; there was one common denominator: they all said that they had a strong bond with their partner and wanted to settle down together. Hence, I concluded that commitment should be considered as the key element in deciding cohabitation. This finding came as a result of analyzing what participants wanted in their relationships. The following terms were recurring in the interviews: stability, having a home, settle, a serious relationship, a sincere relationship, a long-term relationship, and a commitment.

The partners' commitment to each other was expressed in various ways. First, commitment was expressed by contributing money and sharing household chores in their joint household. Both partners contributed a certain amount of money to set up their mutual home and also divided household chores according to their time, availability, interest and skills. One gay participant explained his experience as follows:

I firstly had to contribute towards paying the rent and household expenses... You know it means something, doesn't it? Once we moved in and when we were unpacking our stuff, I was cleaning here and there and my boyfriend was arranging this and that. I was able to feel, 'ah we are now living together.' You know, I do almost all of the housework and buy some food while he pays the rent and bills. This is the kind of commitment that we are talking about.¹⁷

Study findings revealed that participants' responsibility for paying a certain amount of money and sharing household chores were common indicators showing commitment.

One lesbian participant described her experience in the following way:

You know we just wanted to be together for a long time, more intensely and more intimately when we began our relationship. So, I went to spend a night at my girlfriend's house... it just turned

¹⁷ Interview in Blantyre, (8.2.2016).

out to be the following night and the following night. I only went to my house to get the things I needed like clothes, shoes etc. Then I realized that I didn't have to go to my house anymore because I had everything I needed at my partner's house. I felt more at home at her house and eventually we ended up cohabiting. I think it's just a natural process and not a pre-planned thing.¹⁸

Another lesbian participant narrated her experience:

I don't remember discussing cohabitation in our relationship. It just happened naturally. I just wanted to take care of my partner and spend more time with her. I felt so much secure and stable when I was with her and she also felt the same. Then one day I permanently moved out of my house and joined her so that we could live and enjoy life together.¹⁹

Meaning of a Home for a Cohabiting Couple

Home is an essential place for couples to practice cohabitation. A home is a place which is filled with a range of layers of the occupants' memories, feelings and experiences derived from living in that space. Home is a special space where family practices between intimate individuals take place.²⁰ Most participants in this study reported that home was a very precious space where they engaged in intimate family practices. Hence, this section of the book presents a discussion of findings on the living experiences of LGBTI cohabiting couples in their homes.

Participants in this study pointed out that the practice of intimacy was the best feature of their experience living in a home together. Some of them who had lived with their parents before cohabiting talked about going to rest houses, lodges, motels, or hotels to have sex with their partner. Two reasons were cited as making them uncomfortable in such places: they are expensive and raise suspicion.

¹⁸ Interview in Zomba, (9.2.2016).

¹⁹ Interview in Zomba, (9.2.2016).

²⁰ A Gorman-Murray, "Reconciling Domestic Values: Meaning of Home for Gay Men and Lesbians," *Housing, Theory and Society* 24 (3), (2007), pp. 229-246.

We frequently went to lodges before living together. Of course, it was very much costly. But, the most worrying thing was not the money that we were spending. Oftentimes, we would feel very uncomfortable when the receptionist looked us up and down because we were just two men and wondered what we were going to be doing in the room.²¹

A gay couple's narration indicated that the home created an atmosphere where the cohabiting couple felt a sense of togetherness. Such feelings of togetherness created a mutual bond of love that resulted in caring for one another, and supporting each other.

We have come to have a strong bond with each other by living together in our home. Living in the same house with the same person for at least a year has created a number of bonds between us bringing stability in our relationship.²²

A number of gay participants reported that home was the best place for hosting parties with their fellow LGBTI people. A rich gay couple who participated in this study narrated their experience of hosting gay parties for young gays in town:

We are very much interested with the welfare of young gay people and we want to know how they are getting along in life. So, we often invite those who are vulnerable and experiencing some financial problems, we feed them, help them whenever we can, listening to their stories, and give them some advice. When some of them are struggling with rental issues, we could move them in into our quarters. We just felt the responsibility to take care of our fellow younger gays who are struggling in life. Every weekend, we are busy cooking, drinking, listening to music, watching movies, and celebrating with friends. I think we feel happy to meet the needs of others as they feel happy as well from our help. It's just amazing sharing the little that we have with others.²³

²¹ Interview in Zomba, (9.2.2016).

²² Interview in Blantyre, (8.2.2016).

²³ Interview in Blantyre, (8.2.2016).

A lesbian participant narrated her experience as follows:

Particularly at the beginning of our relationship, I wanted to touch her every minute and every second. But I couldn't do it in the public, could I? And I don't like going to rest houses or lodges as they are filthy. And you know two girls in a room at a lodge could be scandalous in Malawi.²⁴

A lesbian participant narrated her experience:

I didn't have anyone looking after me since I lost both my parents. I always felt that I needed someone to trust and rely on because sometimes I felt like I needed some sort of back-up. Therefore, our home provides a space where my partner cares for me and gives me unconditional support.²⁵

This comment shows that the home proved to be an indispensable atmosphere for emotionally bonding the couple together. This fulfilled their desire to belong and to love each other.

Some lesbian participants said that they needed the home in order to socialize with their friends. It gives them the liberty to fully express their LGBT identities. One lesbian couple described their first anniversary party they hosted at their home with their friends.

We didn't expect much. You know, we just wanted to show our friends that it is possible to live together and enjoy life as lesbians in Malawi. We wanted to celebrate together with fellow birds of same feathers and bring solidarity among us in times of intense homophobic utterances on the social media in Malawi. Amazingly quite a lot of people came and we enjoyed together. It was a cool relaxed atmosphere where partners could hug, kiss each other and do a lot of stuff without any fear of homophobia. When they left we felt very great for hosting the party.²⁶

²⁴ Interview in Lilongwe, (15.2.2016).

²⁵ Interview in Zomba, (9.2.2016).

²⁶ Interview in Zomba, (9.2.2016).

Homosexuality Culture in Malawi

The study findings revealed that the development of a homosexuality culture in Malawi is one of the contributing factors towards the promotion of homosexuality in Malawian communities. It shows the prevalence of homosexuality in Malawian society. Homosexuality culture plays a crucial role in the coming out process by creating a welcoming and accepting ambience for LGBTI people. It further provides a community for belonging and identification. Homosexual venues also provide safe havens for LGBT people to socialize without any fear of scandal and homophobia.²⁷

LGBTI (Lesbian, Gay, Bisexual, Transgender, and Intersex) Venues in Malawi

LGBTI people have established social networks of friendships and relationships which lead to their participation in the homosexual cultural and community life. The data analysis for this study revealed that the first experience of some of the participants had with gay cultural life was through going to LGBT nightclubs. The nightclubs provided a contact point with the LGBT community. Within the nightclubs the LGBTI people are able to socialize with friends, meet new people and gain knowledge and insight into the dynamics of gay culture.²⁸

Conventional homosexual venues proved to be the most common means of exploring homosexual culture in Malawi. Data analysis revealed that coming out into the homosexual culture was not a static process. It progressively changed as the LGBTI people gained more knowledge, experience and familiarity with other LGBTI people and real life issues of mutual concern. Thus, the expansion of their social network led to the affirmation of their LGBTI identity.

Participants described their first visit to a homosexual venue with varying degrees of emotions. Some described it as a fearful experience

²⁷ Interviews for the section on homosexual culture in Malawi were made in Lilongwe and Blantyre from 16-21 February 2016.

²⁸ Interview in Lilongwe (16.2.2016).

in which they had no idea of what to expect while others saw it as a liberating experience with lots of opportunities for freedom and belonging.

A gay participant related his first experience of going to a gay night club. He explained that:

"I recall it was on a Saturday evening when we went to a gay nightclub with my friend. I was both excited and nervous for this new adventure. We entered through the front door and walked on the podium before getting a seat. I was surprised to see about fifty men in the bar and I couldn't believe it that in Malawi you can have such a number of gays out on a night celebrating. I just felt that I am not the only one... we are many. This experience made me more comfortable and courageous for whom I am as a gay."²⁹

Some participants were disappointed with LGBTI nightclubs because of drug use prevalent at such venues. One gay participant explained:

"Drugs are part of these nightclubs but they don't attract me, or the scene, so I concluded that the nightclub is not for me. I don't want to mess and ruin my life with drugs. That's simply not part of me."³⁰

A young lesbian woman described her experience as follows:

"I got an invitation on social media to attend an all-night lesbian party. I thought of giving it a try. So, I went there only to see some faces that I'd never thought were lesbians. At first, I thought that I had been blackmailed and felt very frightened. But, later I saw some hugging, kissing, and really caressing each other then I gathered some courage and realized that I was at the right place. This is where I had my first experience with a woman... I can't even describe it in words. I was in love with her for so long before we actually got together, and damn she was so amazing. She was

²⁹ Interview in Lilongwe, (17.2.2016).

³⁰ Interview in Blantyre, (20.2.2016).

so loving, so gentle; she knew exactly what to do to make me feel good, both sexually and emotionally."³¹

Data analysis of this study further revealed that as LGBTI peoples' network of friends grew, their frequency of visiting the homosexual venues diminished. While attending LGBTI venues involved going out with a group of people, some LGBTI people preferred being alone with their boyfriend or girlfriend. Participants narrated that after some time of visiting the nightclub scene, the majority of LGBTI people became disillusioned with that environment. Consequently, they completely stopped the visits or only made rare visits.

One lesbian woman explained that she had to stop visiting nightclubs because she doesn't drink beer and that hanging out with drunkards made her very uncomfortable. Another lesbian woman explained that she stopped going to the nightclub because the atmosphere placed an over-emphasis on sex which was risky to her. She commented:

One of the things that concern me about the nightclubs is the emphasis that is put on youth and sex. Especially when you are a teenager, the older women just think of having sex with you. That's its almost compulsory to get out there and have sex with as many older women as you can. I just think that's wrong because I am not a bitch.³²

Accordingly, homosexual venues provide opportunities for social networking but also involve some risky behaviour. However, it ultimately boils down to an individual's choice on how to participate in these venues.

Having discussed the development of homosexual culture in Malawi, I will now present a discussion on the prevalence of homosexuality in educational institutions in Malawi.

³¹ Ibid.

³² Ibid.

Prevalence of Homosexuality in Educational Institutions

The findings of this study have revealed that homosexuality is prevalent in Malawian schools because of two reasons: (1) the schools create a space for social interaction; and (2) the school environment is a traditional mainstream structure where students spend a lot of their time. Although individual experiences were somehow different, the majority of young men and women who participated in this study confirmed that homosexuality is practiced in educational institutions in Malawi.

Educational Institutions as a Safe Environment

Students who participated in this study explained that the school environment was considered as a safe haven for expressing their LGBT identity.

A gay university student pursuing an engineering course supported the notion that the workload is the cause of objectivity, noting that he can usually be found with his head down, close to the books. Moreover, everyone is busy wanting to become a competent engineer and enter the engineering industry. Hence, discussions about gay are completely out of place.

I would be comfortable discussing about gay if someone brought it up but I don't think anyone will bring up that topic, because it's irrelevant to our academic work and career. I don't know if there would be a reason for discussing homosexuality when we are busy solving mathematical problems... It doesn't talk about my sexuality or anything like that. So, I feel if it was ever to come up in a technical course like ours people would react negatively because they would not see its relevance.³³

One gay university student explained his experience as follows:

One thing that makes me feel safe and secure at the university campus is that kind of impersonal nature of social interactions that exists... they ideally don't care who you are or what you do as long as you can be passing exams in your class. When school gets

³³ Interview in Blantyre, (16.1.2016).

tough and you have to beat the deadline for submitting assignments... surely no one has the time to be talking about being gay or lesbian.³⁴

A twenty one year old lesbian who is doing her third year at the university narrated the following story during the interview:

Currently I'm having what I've affectionately dubbed my little "lesbian identity crisis." It's been happening for the last few months. I just feel like I don't know a lot of things. I'm sure it's all a normal part of coming out. All of my life I just assumed I was straight and I guess that sort of filtered the way I acted and the things I assumed that I'd be expected to do...I just felt the need to be different. To *metamorphosize!* To evolve! All I wanted was to have a tangible difference between my "straight life" and my "lesbian life." I felt like there should be a dividing line or something...

My first year at college was very difficult since I did not know any lesbian friend at campus. I felt the need to find community and make friends with other lesbians. But I didn't really know any...which of course made things a little difficult. I was afraid of approaching any girl and talk to her about my sexual orientation because they would let the whole campus know about my identity. Fortunately, I discovered that a lot of opportunities exist on social networking sites to connect with some fellow lesbians. I was able to hook up with my current girlfriend who is also a fellow student at this university campus through the social networking sites.³⁵

This narrative shows that the participant was going through an identity crisis. This is exemplified in the fact that she thought that she was straight but within her she felt that she was a lesbian. In other words, it takes some time for an individual to discover their sexual orientation. Moreover, this narrative demonstrates that issues of sexual orientation in Malawi are not well-known and there is need for sensitizing the general public on the same. One way of doing this is to incorporate

³⁴ Interview in Zomba (20.1.2016).

³⁵ Ibid.

topics of sexual orientation in both primary and secondary school curriculum.

Some participants of this study reported that the higher education environment provided for them a space for escape from social norms and pressures. Participants talked about how the university encourages an objective and individualistic viewpoint for students to achieve academic excellence. Consequently, issues of sexual orientation are overshadowed by the desire by every student to pass exams. A lesbian student at the university related her experience as follows:

I don't connect with many students outside of my classes. And at that point, I get so busy with school stuff... that there is no time for doing other things apart from classes, library, assignments and the like. I have very limited time trying to make new friends and getting into a new group. I just live my life and concentrate on my studies and have no time to worry about my sexual orientation.³⁶

Educational Institutions as a Hostile Environment for LGBTI Students

Peer group pressure and homophobia were mentioned as factors that contributed to the level of discomfort and difficulty that LGBTI students experienced, particularly at secondary and tertiary levels of education. This often led to the establishment of non-threatening friendships with both young men and women at the campus.

For young men who engaged in activities and displayed behaviours considered to be effeminate, the penalty was abuse and expulsion from the peer group. For instance, one young man explained that there was a lot of homophobia at school. He related that:

I was very effeminate at the time. I'm not effeminate now, but in secondary school I was extremely effeminate. All the friends I had were girls, and I think I used to adopt their mannerisms. I was extremely effeminate and the boys used to tease me.³⁷

³⁶ Interview in Zomba (18.1.2016).

³⁷ Ibid.

Moreover, participants reported that peer harassment, mainly in the form of verbal abuse occurred on a daily basis throughout their secondary and university education. The participants articulated the pain, humiliation and fear that this constant bombardment of insults had on their self-identity, and within the context of their coming out, as follows:

Well, I have been criticized and been called 'mathanyula' (gay) so many times, I don't know. Whenever I hear that word 'mathanyula' it strikes fear into my heart. I start getting nervous. When I hear that name I feel like everyone knows about me. I can just feel that people are pointing fingers or saying something about me.³⁸

One of the participants profoundly felt the effects of homophobic insults, and described his experience as follows:

There was this one guy and he was talking to someone else and then he looked at me and then he said 'He's a fucking gay'... Then they all started laughing at me. And that just hit ... I just felt like my life was shattered into pieces. I couldn't take it any longer. It hurts too much.³⁹

The ever-present threat of verbal and physical abuse can be very stressful for gay and lesbian youth in the school situation. Due to the legal requirements of school attendance, they provide as it were a "captive" audience for homophobic bullies in these contexts. Most gay youngsters, however, remain in mainstream settings. They are often harassed and even sometimes physically attacked in these school settings.⁴⁰ Peer harassment is particularly problematic for gay and lesbian youth. Given that much of it occurs in school, the consequences include a range of academic difficulties. These

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ N. Taylor, "Gay and Lesbian Youth: Challenging the Policy of Denial," *Journal of Gay and Lesbian Youth*, 1(3/4), (1994), pp. 39-73.

difficulties have been noted both anecdotally and in systematic research.⁴¹

Other participants explained that they felt public embarrassment when their teachers made insulting comments about their sexual orientation, especially when this was supported by their peers in class. This left them feeling vulnerable and afraid. One lesbian student explained her experiences as follows:

Like a teacher would say something insulting about being gay or lesbian. It would hit me so hard... like someone is pricking my heart with a needle. And worse still, the whole class was supporting him. I could just feel that I am not fitting in the class. I could imagine how all by myself am I going to stand up against the whole class, and the teacher, who should know better.⁴²

Several girls who participated in this study explained that they were verbally harassed in demeaning ways, including being called "*lesbian*." One girl explained her ordeal that her friends deserted her when they discovered that she was a lesbian. She narrated:

"I had friends that just stopped talking to me when they discovered that I was a lesbian... It bothered me a lot that I didn't have any more friends. I just wouldn't go to school... It's really hard to be isolated at school when all friends are deserting you ... When you go to the same school for four years, and then, in your final year, you're alone. This eventually affected my performance at school which eventually led to my dropping out of school."⁴³

These narratives have shown that homosexual practice is existent in Malawian schools. The school environment can both be a fearful or welcoming place for LGBT students. In most cases, LGBTI students were subjected to homophobic abuse and harassment while in very few cases, the school environment acted as a safe haven for them.

⁴¹ R. Travers, & M. Schneider, "Barriers to Accessibility for Lesbian and Gay Youth Needing Addictions Services," *Youth and Society*, 27(3), (1996), pp. 356-378.

⁴² Interview in Blantyre, (20.2.2016).

⁴³ Interview in Blantyre, (20.2.2016).

Having discussed homosexuality in Malawian schools, I will now present a discussion on homosexuality in Malawian prisons.

Prevalence of Homosexuality in Malawian Prisons

This section of the study presents a discussion on the prevalence of homosexuality in Malawian prisons. The study was conducted at the male section of Zomba Maximum Prison.

Sexual practices in prisons around the world are almost the same. Inmates incarcerated for many years in a limited space without the opportunity for normal heterosexual outlets end up practicing same-sex activities.⁴⁴ I am of the opinion that Malawian prisons are no exception as far as the occurrence of same-sex activities are concerned.

Prison conditions in Malawi fail drastically to meet the standards stipulated in the UN Standard Minimum Rules for the Treatment of Prisoners (SMRs).⁴⁵ Sophie Kalinde, Malawi Human Rights Commission chairperson commented that prison conditions in the country was very bad.⁴⁶ Two main dehumanizing conditions in Malawian prisons are: (1) overcrowding, with an estimated figure of 13 000 inmates who occupy space in Malawi jails designed for 6 000 prisoners and (2) shortage of food since prisoners eat only one meal in a day.⁴⁷

Factors Promoting Homosexual Practice in Malawian Prisons

Study findings revealed the following six factors which promotes homosexual practice in prison: overcrowding, physiological needs, food, mixing of elderly prisoners and juveniles, curtains (*Makatani*), and sex-trade.⁴⁸

⁴⁴ Frank Shayi, "Sexual Practices in South African Prisons from the Perspective of Christian Ethics," PhD, University of Pretoria, 2008.

⁴⁵ www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum, (12.1.2016).

⁴⁶ "Malawi Dehumanizing Prison Conditions Worries Norway," *Nyasa Times*, (24.9.2013).

⁴⁷ Sylvester Nyoni, "Court Blows 'SOS' Whistle on Inhumane Treatment in Malawi's Prisons," *Nyasa Times*, (3.2.2016).

⁴⁸ Interview at Zomba Maximum Security Prison, Zomba, 15.2.2016.

Overcrowding

Overcrowding negatively affects inmates by denying their right to living space and privacy. Hence, overcrowding is the major causative factor for prisoners to engage in homosexual practice.⁴⁹ Of course, this does not mean that the absence of overcrowding in prisons automatically eliminates homosexual practice. Far from it, it is a known fact that some people have a homosexual orientation and practice homosexuality outside prior to their incarceration.

A prison officer reported that while prison authorities were aware that sexual abuse was taking place in jails, the biggest problem they faced was overcrowding. The first priority of any successful prison reform programme should be the reduction or elimination of overcrowding.⁵⁰

Findings of this study have revealed that overcrowding is a factor contributing to inmates seeking same-sex sexual gratification. Participants reported that in overcrowded cells, inmates who are homosexually aroused take advantage of others and either coerce or force them to have homosexual sex. Also, rubbing shoulders with unknown people one never chose to stay with for a very long period of time in a confined space does affect people in a negative way.⁵¹

A study participant narrated that none of the men who have been incarcerated or have worked in prisons want anyone to know how much sex goes on in there and the general public doesn't want to believe that men will turn to smaller, weaker men for sexual gratification in an environment without females.

I was sent to prison when I was 21 for robbery. At intake, we were searched which was very embarrassing for me, but then I noticed how many other inmates were staring at my body and knew right then I was in for a rough time. I was celled with young inmates and we were bunched together in a very small space. During the

⁴⁹ Frank Shayi, *Sexual Practices in South African Prisons from the Perspective of Christian Ethics*, PhD, 2008.

⁵⁰ Interview at Zomba Maximum Security Prison, Zomba, (4.2.2016).

⁵¹ Ibid.

night two big scary guys came into our cell and told me that I was their wife. They forced me to kneel down and suck their penis one after another. It was a very terrible experience for me as I could hear many young boys sobbing, crying and begging for mercy from the old timers. However, none of these things made me gay but it messed up my life very badly.⁵²

Participants in this study reported that inmates sleep "*Shamba*" style due to overcrowding or congestion in the cells. *Shamba* style means that the inmates sleep by standing or squatting while very close and squeezed to each other (*kugona choima kapena monjuta koma mothinana kwambiri*) from 3:30 p.m. to 6:30 am, 16 hours. Consequently, this leads to swollen legs because of being in one position for a long period of time without moving. But, there are other inmates who are "Big Fish" in prison, i.e. the Nyapalas, In-charge, and life prisoners who have little space called "*Phazi*" (foot), which is 2 m by 20 cm. They sell that space at K 100 per night to other prisoners who want to sleep peacefully and not *Shamba* style. Therefore, one of the ways in which poor inmates manage to raise money to pay for the "*Phazi*" is to engage in homosexual prostitution at a fee of K 30 to K 50 per round.⁵³

Physiological Needs

Study findings have revealed that prison life demands radical adjustments on the part of the inmates. For instance, sexually active people are suddenly expected to be temporarily celibate during their time of imprisonment. The biological need for sex cannot instantly be suppressed in the life of a sexually active person. Therefore, inmates seek some form of sexual outlets like masturbation and homosexuality.⁵⁴

Participants explained that there are two main forms of sex they practiced: thigh sex and anal penetration sex. On one hand, some participants who practiced thigh sex were reluctant to be categorized

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

as practicing homosexuality. For them, thigh sex was just a way of release and getting some pleasure. Moreover, it was consensual and performed solely for meeting sexual needs. It is done with mutual respect for each other and does not involve any power struggles, coercion and denigration.⁵⁵

On the other hand, participants explained that homosexuality in prison is associated with violence, coercion, corruption and power struggles. Homosexual practice is rampant in prisons because it is considered as the main alternative to heterosexual sex. One participant narrated his experience as follows:

I was in jail for two years. My first experience was that I was preyed upon and coerced into giving sex to the other inmates by our cell leader. When you get locked into a cell with a big guy, and you are told in detail what's going to happen if you resist when he has you jacked up against the wall by your throat and he is right in your face, you find you allow him to slide you down the wall and onto your knees where he orders you to pull it out and you end up with a mouth full of it. There is no way out if you are wanted for sex. You pretty much do it or die deal. Well maybe not die but beaten badly. Yes, it is aggression, power, control and sexual release too. Is it gay? No. Sure it is gay type sex, but being gay is more than the sex part, it is a whole mindset and life style with sexual attraction to the same sex. Hence, I discovered that although I was not gay I was sodomised because I complained to him the next morning when a guy flopped out his penis in our cell and wanted me to suck him. I didn't t know that our cell leader had sent him. My pay back was being told to forget it and go and bath. Whilst I was bathing he sent some two guys in and they both sodomised me. I had to try and walk normal back to our cell with a sore anus. To my surprise everyone in the cell started to laugh at me.⁵⁶

⁵⁵ Ibid.

⁵⁶ Ibid.

These narratives demonstrate that inmates engage in homosexual practice as a way of fulfilling some physiological needs.

Food

All participants in this study cited lack of food as a contributing factor promoting homosexuality in Malawi prisons. The inmates are served with very little food once a day. However, the Nyapala's, kitchen masters, and life prisoners, have access to plenty of food. As a result, food is exchanged for homosexual sex. Also, those who are in a homosexual relationship with the Nyapala's, kitchen masters, and life prisoners are privileged to be given enough food.⁵⁷

Mixing of Elderly Prisoners and Juveniles

Participants in this study cited the mixing of old prisoners and juveniles to be another contributing factor to homosexuality in Malawian prisons. The old prisoners tease these boys that they have a beautiful face like that of their mother or sister, and when they are moving they shake their bums well like a woman. The end result is that the old prisoners take these young boys as their wives indulging in homosexuality.⁵⁸

Curtains (Makatani)

One participant in this study explained that at each and every corner of a cell, there is a tent like structure covered with blankets called "*Makatani*." "*Makatani*" contributes to homosexuality because they are used as rest houses. Inmates pay K 50 to the owner of the "*Makatani*" in order to have homosexual sex for 30 minutes.⁵⁹

Sex-trade in Prisons

Study findings have revealed that sex is a currency in prison and a crucial component of the complex systems of power. Participants explained

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

that sex has an exchange value in prison. It may be exchanged for small benefits such as a cigarette, Indian hemp (*chamba*), for special favours, or for basic rights such as food or protection from potentially life-threatening situations. A juvenile inmate, for example, reported that refusing to have sex with another inmate meant that he could not get food for the day. He wants me to have sex with him and he works in the kitchen. I do not want to, so he tells others that I must not be served with food. Even when you manage to push your way and get some food... you just see someone snatching the plate from you before you can start eating. It's hectic here.⁶⁰

Another participant narrated what he witnessed happening in prison:

These juveniles agreed to have sex with these men because they had no clothes and no blanket, place to sleep, and they were hungry. One day these boys started to cry and refused to have sex. The men took away their blankets and after spending a night in the cold they agreed to allow the men to have sex with them again. It's very horrible.⁶¹

Study participants also explained that homosexual prostitution, popularly known as '*short time*' is also practiced in prison. This is practiced mostly by young effeminate boys. The more physically attractive one is the more likelihood for engaging in prostitution; selling their bodies for cigarettes, Indian hemp (*chamba*), food, and protection. It is referred to as '*short time*' because it is not intended to develop into a relationship, but just provides a sexual service in order to get some incentives and it ends up right there.⁶²

Another participant explained that some inmates resort to prostitution because of lack of support from their relatives who are outside prison. These gay prostitutes dress like women, wear beads in their waist, apply lipstick on their lips, put on bracelets and ear rings, talk like women, shake their bums when moving, and wear tight clothes (*dinda-dinda*) to

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

+show off their sexual figure, in order to entice other inmates. They charge K 50 per round (short-time) especially at Gwira Wako Rest House at B/Block.⁶³

Findings of this study further revealed that although provisions in the prison are inadequate; the "Big Fish" in the homosexual syndicates will always wash to clean white, eat delicious food all the time, wear nice shoes or sandals, have high technology gadgets like radios, MP3's, good sleeping space etc. Therefore, this makes other poor prisoners to give themselves over to homosexual practice with the "Big Fish" in return for the "goodies."⁶⁴

Moreover, apart from wilful participation in homosexual prostitution, other prisoners are forced into prostitution against their own will.

The situation is an epidemic. Dozens of us were being forced into prostitution, and I can assure you that as I speak there are other (prisoners) who are being forced into prostitution. The last time I was sold (for sex), the 'client' paid with some assorted items like: cigarettes, Indian hemp, toothpaste, salt, soap, and lotion. It's horrible what goes on, and in prison no one comes forward to help us!⁶⁵

A prison warder commented that: "When someone is in prison, the government has a responsibility to protect them, and it's regrettable that this isn't happening. Prisoners come to feel they are no longer part of society, which is very dangerous because many return home and the extreme abuses they've suffered end up impacting their communities. Sexual abuse in prison is preventable, but we have to fight to make it a reality."⁶⁶

These narratives demonstrate that homosexual prostitution is very rampant in Malawian prisons mainly as a means of survival in the hard conditions of prison life.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

Patterns of Homosexual Practices in Malawian Prisons

Study findings revealed that there are two main types of homosexual practices in Malawian prisons: mutual consensual homosexual sex and homosexual rape.⁶⁷

Mutual Consensual Homosexual Sex

Study findings revealed that there are two groups of inmates who practice consensual homosexual sex in Malawian prisons. The first group is comprised of people who have a same-sex sexual orientation. Some of these inmates were already homosexuals when they went to prison and they continue their sexual practices there. Others would have entered prison as heterosexuals but become homosexuals while in prison either voluntarily or being forced by other inmates. Usually these are convicts who are serving very long sentences.⁶⁸

The second group consists mainly of heterosexual inmates who are sexually active and engage in homosexual practice during their time of imprisonment. Mostly, these inmates resume heterosexual sexual practice once released from prison. These are known as situational homosexuals.⁶⁹

A participant observed that most of the sex in prison is a deal of some kind. Men with their wives demonstrate their love by buying foodstuffs i.e. rice, relish, cooking oil, salt, and other commodities like soap, lotion, toothpaste, cigarettes, etc. True love happens in prison. I know two men who have been lovers in prison for the past ten years. They truly love each other. And, when they are having homosexual sex it's just normal family relations.⁷⁰

⁶⁷ Ibid.

⁶⁸ Frank Shayi, "Sexual Practices in South African Prisons from the Perspective of Christian Ethics," PhD, University of Pretoria, 2008.

⁶⁹ Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

⁷⁰ Interview at Zomba Maximum Security Prison, Zomba, (4.2.2016).

Some inmates who are in a homosexual relationship live, eat, and sleep together as a family. They call each other love names like sweet heart, darling, honey, dad, *mwana nyatwa*, *mwana bullet*, *mwana bomba*, which means a very handsome and lovely person etc.⁷¹

Another participant narrated that inmates practicing homosexuality keep secrets concerning their affairs. They don't disclose any information to anyone who is not a member of their group. However, one can observe their behaviour. There is a strong bond between the homosexual lovers i.e. not allowing the wife to move alone without a bodyguard, relieving the wife from doing household chores and instead hiring a "Batman" (someone who does the work and is paid by the provision of food). The husbands are always jealous for their wives to the extent of fighting with other inmates who are suspected of playing with their wives.⁷²

Another participant in this study explained that life is relatively easier for gay-wives because they have access to enough food, space to sleep, and freedom of movement i.e. from B/Block to First Offender Yard, walking freely after lock-up time.⁷³

Another participant explained that gay-wives do not have their own personal place to sleep freely apart from their husband's place. But, when the relationship is over, the gay-wife is sold to someone else so that the husband can reclaim all his expenses.⁷⁴

These narratives have shown the reality of homosexual love in Malawian prisons.

Homosexual Rape

According to Merriam Webster dictionary rape is the unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against the will usually of a female or with a person who

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

is beneath a certain age or incapable of valid consent.⁷⁵ Thus, homosexual rape happens when there is no trace of consent by the passive partner and sex is directly forced in a violent attack. Rape is one of the many forms of physical violence feared or experienced by numerous prison inmates. Although reliable statistics as to the actual extent of the problem are not available, male rape, at least in some Malawian prisons, was reported by participants. A young inmate narrated his experience concerning homosexual rape in prison:

I want to tell you what it's like, it's very terrible. It happened early in the morning when we were getting out of our cell... A big guy stopped me and turned me around, stood on me, pressing me, he was so frightening. I was scared, shaking, and crying. He hit me hard across the face and told me that if I was to cry I was to cry silently, and I shouldn't shout.

'He made me ... he peed in my mouth. He was swearing calling me names. He said: 'You know you like it; you know you really enjoy it, and you know you want this.' His eyes, red eyes ... he looked at me and said: 'I gave you what you wanted...' I was completely devastated by this sodomy attack. I am 20 years old and feel that my manhood has been violated. No young man should have to endure this kind of experience.'⁷⁶

An ex-convict narrated his experience of homosexual rape as follows:

I was homosexually raped when I was entering my cell in the evening. Suddenly two men grabbed me from behind and knocked me down to the floor while one held me down the other raped me. For two months afterwards, I had very frightening flashbacks to this homosexual assault. During these flashbacks I felt as though it was happening all over again. It was a very embarrassing as well as horrible experience for me. I won't forget.⁷⁷

Other participants explained that homosexual rape is considered as a crime which one can be charged and sentenced on top of the other

⁷⁵ www.merriam-webster.com/dictionary/rape, Merriam-Webster, (28.4.2016).

⁷⁶ Interview at Zomba Maximum Security Prison, Zomba, (4.2.2016).

⁷⁷ Ibid.

sentence being served. When a complaint of homosexual rape has been lodged; prison officers look for evidence on the penis of the penetrator and they look for some sperms around the anus of the penetrated before taking the matter further. For this reason, incidences of homosexual rape have drastically reduced but it does occur. Sometimes the homosexual rape victim is afraid of disclosing for fear of being harassed by the gangs who operate homosexual syndicates.⁷⁸

I am of the opinion that the government should put in place tough measures for curbing homosexual rape since it is one way in which HIV/AIDS is transmitted. Also, the victims of homosexual rape should be able to urgently access medical assistance which can help in curbing the spread of infections.

Conclusion

These narratives have shown that homosexuality is practiced in Malawian prisons. Study findings have revealed that inmates who are incarcerated together for a long period of time under circumstances that are not conducive for normal living end up either having sex with each other or being coerced to have sex with inmates. Also, study findings have revealed that it is not only homosexuals who practice homosexuality in prisons but also heterosexuals because the circumstances in prison don't provide for heterosexual encounters.⁷⁹

Factors which Promote Homosexuality in Malawi

This study has found that there are at least five factors that motivate people to become homosexuals or engage in homosexual behaviour in Malawi. These factors include: money, the push for human rights, the influence of non-governmental organizations (NGO's), failure to propose the opposite sex, and modern media technologies.

⁷⁸ Ibid.

⁷⁹ Ibid.

Money

One respondent argued that most people in Malawi become homosexuals because they are enticed by money. However, it is morally wrong to get money by indulging in bad behaviour like homosexuality. Money should not become a reason for devaluing our culture.⁸⁰ Therefore, I argue that the commercial argument for motivation into homosexuality is an important factor given the harsh economic climate in Malawi, whereby some people have found engagement in homosexuality to be a survival strategy.

In the same vein, many western donors have given a lot of money to both the Malawi government and NGO's to campaign for LGBTI rights.⁸¹ Eventually, homosexual practice will become more prevalent in Malawi because both the government and NGO's are receiving donor aid in order to promote homosexuality.

Human Rights

Another respondent observed that people are practicing homosexuality due to the push for human rights and freedom which allows them to do anything they want.⁸² This observation resonates with the plea of the UK High Commission in Lilongwe when Police arrested two gay men on sodomy charges on 7 December 2015. The High Commission argued that Britain was committed to ensuring that all LGBTI people around the world are free to live their lives in a safe and just environment... Malawi government was asked to defend human rights for all without discrimination.⁸³ The adoption of a gay agenda by Western governments as a key priority in ensuring the universality of human rights has repercussions on African countries that criminalize homosexuality. For instance, Malawi as a signatory of at least thirty two international human rights

⁸⁰ Focus Group Discussion, Blantyre, (10.10.2015)

⁸¹ "Global Fund Gives Malawi Record \$ 380 Million Grant: Deepen Partnership to Fight HIV, TB, and Malaria," *Nyasa Times*, (22.10.2015).

⁸² Focus Group Discussion, Simeon Mvula village, Mzimba, (13.10.2015).

⁸³ Thom Chiumia, "UK Parliament Discusses Malawi Gay 'Horrific News,'" *Nyasa Times*, (17.12.2015).

treatises⁸⁴ was regarded as failing to live up to its international human rights obligations. This is the reason why CEDEP and the international community have always maintained that Malawi is in violation of international law for criminalizing homosexuality.⁸⁵

Malawi's human rights record has been questioned by the international community with a special reference to LGBTI rights. For instance, an international outcry was made due to the arrest of two gay couples: Steven Monjeza and Tiwonge Chimbalanga⁸⁶ and Cuthbert Kulemela and Kelvin Gonani⁸⁷ on homosexual charges. The international community argued that Malawi is failing to honour its human rights obligations which it ratified as a member of the United Nations.⁸⁸ Consequently, the government of Malawi bowed down to international pressure to release the gay couple in order to save its human rights record. Samuel Tembenu, the Minister of Justice announced the dropping of charges against a gay couple: Cuthbert Kulemela and Kelvin Gonani⁸⁹ on 20 December 2015. He argued that the Malawi government has dropped the charges because it wanted to demonstrate its adherence to universally accepted standards of human rights.⁹⁰

CEDEP has repeatedly said that the criminalization of homosexuality violates human rights and the Constitution of Malawi. Malawi has a very

⁸⁴ Republic of Malawi, Report to the African Commission on Human and People's Rights: Implementation of the African Charter on Human and Peoples Rights 1995-2013 and the Protocol to the African Charter on Human and Peoples rights on the Rights of Women 2005-2013.

⁸⁵ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality Difficult in Malawi," MA, Roehampton University, 2012.

⁸⁶ Jessica Geen, "Malawi Gay Couple Found Guilty of 'Unnatural Acts' and 'Gross Indecency,'" *Pinknews*, (18.5.2010).

⁸⁷ Wanga Gwede, "US Envoy Urges Malawi to Drop Charges for Gay Couple," *Nyasa Times*, (15.12.2015).

⁸⁸ Ibid.

⁸⁹ Wanga Gwede, "Two Men Nabbed for Gay Sex Act Charged in Malawi," *Nyasa Times*, (9.12.2015).

⁹⁰ Thom Chiumia, "Malawi Drops Charges against Gay Men: Anti-Homosexual Laws Suspended, Says Justice Minister," *Nyasa Times*, (20.12.2015).

progressive constitution which contains a bill of rights as a pillar of good governance and exercise of power by the state.⁹¹ In the context of human rights, the preamble of the constitution recognizes "sanctity of human life," "private consciousness," and that there will always be constitutional order.⁹² Moreover, Section 5 of the constitution states that "any act of government or any law which is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid."⁹³ Thus, the government of Malawi is obliged to fulfil its constitutional mandate of respecting and upholding human rights to all its citizens, including LGBTI individuals.

I am of the opinion that although Malawi is a sovereign state;⁹⁴ it is forced to tolerate LGBTI rights against the wishes of the majority of its citizens due to human rights obligations. Hence, eventually Malawi will legalize homosexuality for fear of being isolated by the international community and being vilified as a country that does not respect and uphold human rights.

The Influence of Non-governmental Organizations (NGO's)

The youth, in particular, practice homosexuality because they are being used by different organizations like CEDEP and CHRR which are fighting for gay rights in Malawi. These two organizations want to have followers so that they can be getting foreign donations.⁹⁵ In the same vein, T/A Kuntaja of Blantyre noted that some civil society organizations who

⁹¹ "A Manual on Human Rights and Sexual Orientation in Malawi," Itech Corp Designs and Publishers, 2011.

⁹² Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality Difficult in Malawi," MA, Roehampton University, 2012.

⁹³ "A Manual on Human Rights and Sexual Orientation in Malawi," Itech Corp Designs and Publishers, 2011.

⁹⁴ www.malawi.gov.mw/images/.../act/Constitution%20of%20Malawi.pdf, (22.3.2016).

⁹⁵ Focus Group Discussion, Lilongwe, (28.10.2015).

were advocating for same sex marriage legalization just want to brain-wash people for their selfish gains. Same sex marriages are not part of our culture.⁹⁶

The need for organizations that could effectively handle the challenges faced by homosexual people in Malawi motivated CEDEP and CHRR to take a leading role in promoting gay rights in the country. For this reason, many people have accused these two organizations of corrupting the culture of Malawi by promoting gay rights. However, the work of these two organizations on LGBTI rights issues in Malawi is one of the contributing factors to a bright future for homosexuality in the country. They have maintained media visibility and commented practically on any arising issue of homosexuality in Malawi. In other words, CEDEP and CHRR are a voice of the voiceless LGBTI community in Malawi. This finding is important because it shows that these two organizations are constantly interacting with the media which was identified by Manuel Malamba as one of the factors that shapes people's attitudes towards homosexuality.⁹⁷

Failure to Propose the Opposite Sex

Some young people, especially boys, practice homosexuality because they do not have the capacity to interact with opposite sex partners.⁹⁸ This finding corresponds to Mudavahnu's study which argues that some people find themselves in such circumstances due to the disappointing failure to express their sexual needs to the opposite sex. As a result they turn to members of their own sex.⁹⁹

⁹⁶ "T/A Kuntaja Speaks against Legalization of Homosexuality," *Nyasa Times*, (24.5.2012).

⁹⁷ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality Difficult in Malawi," MA, Roehampton University, 2012.

⁹⁸ Focus Group Discussion, Blantyre, (15.10.2015).

⁹⁹ Janet Mudavahnu, "The Attitude of the Methodist Church in Zimbabwe to Homosexuality: Towards a Socio-Sexological Theological Investigation," PhD, University of Birmingham, 2010.

Although this finding was identified as one of the motivational factors for becoming a homosexual, very few people fall in this category. My observation is that it takes more courage to make a same-sex proposal than a heterosexual proposal because of the obvious reasons of fear of scandal and homophobia in Malawi.

Modern Media Technologies

The youth also engage in homosexual practice because of the advent of modern media technologies i.e. television, internet, social networking sites etc. The media exposes the youth to uncensored information which is misleading.¹⁰⁰ This finding is similar to Manuel Malamba's study which regards media as one of the contributing factors to the increase of the number of homosexuals in Malawi.¹⁰¹ Further, this finding resonates with Sailes Kaleso's study in which he argues that contemporary youth live in a complex media-saturated environment. The media greatly impacts the youth on a daily basis; this is the only world they know and live in.¹⁰² Enfield observes that most youths obtain their sexual information from peers and the media.¹⁰³ Hoover is of the view that although some people may try to avoid the media, it is not really possible to do so as the media comes in different forms (multimedia) and is present almost everywhere.¹⁰⁴

In the same vein, Eric Sambisa (26), a self-confessed gay, told Malawi News that the advent of social media has simplified the networking of gays in Malawi as they are able to find partners in private groups on

¹⁰⁰ Maurice Nkawihe, "Kill Gays in Malawi, Demands Msonda: 'Devil has no Rights,'" *Nyasa Times*, (3.1.2016). Ken Msonda, People's Party spokesperson and administrative secretary lashed out at media houses which were giving the platform to gays (whom he described as dogs) to be expressing their views.

¹⁰¹ Malamba Manuel, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

¹⁰² Sailes Kaleso, "Popular Youth Culture and its Effects on Nkhoma Synod of CCAP," MA, University of Malawi, 2015.

¹⁰³ L.C Enfield, "Sexual Attitudes and Behavioural Patterns of Adolescents in an Urban Area in the Western Cape", MEd, Stellenbosch University, 2003.

¹⁰⁴ S.T. Hoover, *Religion in the Media Age*, Abingdon: Routledge, 2006.

Facebook and WhatsApp. He reported that he knew at least 200 gays and 20 lesbians in Blantyre.¹⁰⁵

A symbiotic relationship exists between the youth and the media. Consequently, the media need the youth market for economic survival and the youth need the media for guidance and nurture in a society where other societal institutions such as the family, church, and school do not shape the youths' sexuality in the same way they had previously done before.¹⁰⁶ Thus, the media does not only provide information on sex, but has also a powerful influence on the behaviour and sexual attitudes of the youth because of the amount of time they are exposed to issues of sexuality on the media.

Gay rights campaigners have also found media space to be a conducive and effective platform for disseminating their ideologies and lifestyle. Hence, Malawians who are constantly exposed to countless local and international TV programs, radio broadcasting, social networking sites etc. are being influenced in their cultural and sexual ethos.

Conclusion

This chapter has discussed the prevalence of homosexuality in Malawi by presenting the real life experiences of LGBTI people in Malawi. The significance of these narratives is that they demonstrate that gays and lesbians are not only statistics or research variables, but they are a living reality in Malawi. Hence, the on-going homosexual debate in Malawi should be mindful of the fact that gays and lesbians are real people who are yearning for freedom and full acceptance in society.

¹⁰⁵ "Malawi Gay Man Comes Out: 'Either Kill Gays or Give Us Rights,'" *Nyasa Times*, (2.1.2016).

¹⁰⁶ Steven E. Stern et al., "Sexuality and Mass Media: The Historical Context of Psychology's Reaction to Sexuality on the Internet," *The Journal of Sex Research*, Vol 38, Issue 4, 2001.

Chapter 4: The Homosexuality Debate in Africa

In chapter 4 we discussed the prevalence of homosexuality in Malawi which is one of the nations in Africa. Therefore, this chapter presents a discussion on homosexuality in Africa. It evaluates the cultural, moral and human rights implications of homosexuality in Africa. Critics of homosexuality in Africa have argued that the phenomenon is inconsistent with African culture.¹⁰⁷ Also, some politicians, religious, and traditional leaders have used the cultural argument to denounce homosexuality as un-African, inhuman, and a foreign intrusion to African culture.¹⁰⁸ One respondent to a BBC online forum on Homosexuality in Africa argued that Africa and Africans should not respect or entertain homosexuality in any form or fashion. Gay recognition and rights is a Western thing. African culture and tradition does not support nor encourage such things.¹⁰⁹ Yet research has shown that homosexuality has been practiced in Africa for centuries.

The Notion that Homosexuality is Un-African

The main question in this debate is whether homosexuality is indigenous or a foreign intrusion into Africa. African politicians have repeatedly denounced homosexuality as un-African. Robert Mugabe, the former president of Zimbabwe said that homosexuality is a scourge planted by the white man on a pure continent.¹¹⁰ Daniel Arap Moi, the former president of Kenya, made it clear that Kenya had no room or time for homosexuals and lesbians because homosexuality is against African norms and traditions and even in religion it is considered a great

¹⁰⁷ Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance*, No. 3.3, 2012.

¹⁰⁸ Vasu Reddy, "Homophobia, Human Rights and Gay and Lesbian Equality in Africa. Africa, Agenda: Empowering women for Gender Equity" 16(50): (2001), pp. 83-87.

¹⁰⁹ "Homosexuality in Africa," http://news.bbc.co.uk/1/hi/indepth/africa/2002/africa_live, (12.10.2015).

¹¹⁰ Peter Mwaura, "Homosexuality Un-African? It's a Big Lie," *The Nation*, (5.6.2006).

sin.¹¹¹ Olusegun Obasanjo, the former president of Nigeria, stated that homosexuality is unnatural, ungodly, and un-African.¹¹²

Homosexuality in Africa is widely perceived as a western phenomenon and just another import from colonialism. This assumption has led many people to believe that homosexuality is un-African. Consequently, homosexuality is negated in terms of African cultural and moral values.

The argument that homosexuality is un-African is based on African concepts of sexuality which are discussed below.

African Sexuality Rejects Homosexuality

This section of the book presents a discussion of human sexuality from an African perspective. My assumption is that an understanding of the traditional sexual concepts, the religious, cultural beliefs and values that underpin them is a prerequisite for understanding the cultural and moral implications of homosexuality in Africa. The basic objective of this section, therefore, is to show the complex and varied nature of African sexuality which supports the argument that homosexuality is un-African.

Definition of Sex and Sexuality from African Perspective

The *New Penguin English Dictionary* defines sex as the condition of being either male or female into which organisms are divided on the basis of their reproductive role, notably the type of gamete produced, and sexuality as the condition of having a sexual nature of being either male or female and of experiencing sexual desires.¹¹³ Sexuality refers to the reproductive mechanism as well as the basic biological drive that exists in all species and can encompass sexual intercourse and sexual contact in all its forms. The biological aspects of human sexuality deal

¹¹¹ Ibid.

¹¹² Thabo Msibi, "The Lies We Have Been Told: On (Homo) Sexuality in Africa." *Africa Today* 58(1): (2011), pp. 55-77.

¹¹³ "The New Penguin English Dictionary," London: Penguin Books, 2000.

with human reproduction and the physical means with which to carry it out.¹¹⁴

The World Health Organization defines human sexuality as a central aspect of being human throughout life and encompasses sex, gender, identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the inter-action of biological, psychological, social, economic, political, religious and spiritual factors.¹¹⁵

Sexuality is the cultural way of living out our bodily pleasures.¹¹⁶ It is the manner we decide to or are conditioned to enjoy or deny our sexual desires. Sexuality has a lot to do with sex but is more than that as there are other processes and activities surrounding it. Although this should be a private matter, it has always remained at the center of societal organization. It contributes to human definition of the self and their relationships to others. Because sexuality is so encompassing, it has throughout the centuries influenced the family, the community and even the nation. Sexuality plays an important role in population of families and nations. Economic policies have been fashioned to suit sexuality and its consequences. Religious laws and a whole range of taboos have been webbed around the subject of sexuality. Sexuality has throughout history been subject to manipulation and control by individuals and societies.¹¹⁷ The rhetoric that homosexuality is un-African is

¹¹⁴ <http://inerela.org/2010/07/demythologizing-african-conceptions-of-human-sexuality-a-gateway-to-prevention-and-eradication-of-hiv-and-aids-in-africa-prof-james-n-amanze/> (19.4.2016).

¹¹⁵ www.waaid.com/youth/sexuality-whats-right-for-you.html, (19.4.2016).

¹¹⁶ Jeffrey Weeks, *Sexuality*, London: Routledge, 2003.

¹¹⁷ Eno Blankson Ikpe, "Human Sexuality in Nigeria: A Historical Perspective," Understanding Human Sexuality Seminar Series, University of Lagos: ARSRC, 2004.

one way in which African cultural custodians are manipulating and controlling the homosexual debate in Africa.¹¹⁸

Sexuality and gender are intricately related so that it might be difficult to speak of one without the other.¹¹⁹ The term gender is normally used to describe the social condition of being female or male and sexuality is an important outcome of this dualism. It is in the interplay of this dualism in human existence that sexuality is traditionally conceived, expressed, experienced or repressed. Nevertheless, wherever there is a norm, there is always an alternative expression, which could be referred to as a misnomer. Therefore, in sexuality, though there could be culturally accepted expressions, there is always a form of resistance to what is culturally acceptable resulting in situations where draconian taboos and laws are used to repress such developments. But throughout history, sexuality has been in a state of flux, always responding to prevailing economic, political, social, and health conditions.¹²⁰ Thus, in some African traditional societies, sexuality has been in a state of change as a consequence of various developments like the realization of sexual orientation and the push for the recognition of sexual minority rights.

The Socio-cultural Context of Sexuality in Africa

The sociocultural concept of sexuality is used to encompass all life experiences - psychological, social, and cultural- and their collective effect on the formation of human sexuality. The primary importance of sociocultural influence is in defining what sexuality means for the individual. Human beings have the ability to assign meaning to human behaviour. However, a person does not learn the meaning of sexual

¹¹⁸ Peter Mwaura, "Homosexuality Un-African? It's a Big Lie," *The Nation*, (5.6.2006).

¹¹⁹ A. R. Rathus, J. S Nevid, & L. Fichner-Rathus, *Human Sexuality: In a World of Diversity*, Boston: Allyn and Bacon, 1993.

¹²⁰ Eno Blankson Ikpe, "Human Sexuality in Nigeria: A Historical Perspective," *Understanding Human Sexuality Seminar Series*, University of Lagos: ARSRC, 2004.

behaviour in a vacuum, but rather in a sociocultural context.¹²¹ In this case, African culture has ways of defining and understanding sexuality which has implications on homosexuality.

The prevailing cultural attitudes toward sex provide values and beliefs about sexuality and play a major role in the formation of sexuality within a person. Thus cultures try to control the expression of sexuality in different ways.¹²² Thus, homosexuality has been denounced by African leaders as un-African and inconsistent with African culture.¹²³

The cultural meaning of sexuality is filtered through a variety of social structures. Sexuality is learned in a societal context. People learn about sexuality in the same way they learn about friendship or love relationships. Sexual learning is especially potent because of the bonding created between persons when physical pleasure and personal disclosure accompany the sexual encounter. This partner bonding is what most societies wish to support. Sexual bonding not only promotes the formation of kinship ties but also helps to form gender-role concepts.¹²⁴ Consequently, homosexuality is viewed as an attack on this social bonding which is understood in many African societies to be male-female or heterosexual.¹²⁵

In all societies, customs provide boundary mechanisms around important relationships in order to preserve them. For instance, upholding marriage as the place to engage in sexual intercourse and bear children organizes and provides stability in a society.¹²⁶ African leaders who have denounced homosexuality as un-African are actually trying to

¹²¹ Judith K. Balswick, Jack O. Balswick, *Authentic Human Sexuality, An Integrated Christian Approach*, Downers Grove, IL: IVP, 2008.

¹²² Ibid.

¹²³ Vasu Reddy, Homophobia, Human Rights and Gay and Lesbian Equality in Africa. *Africa, Agenda: Empowering Women for Gender Equity* 16(50): (2001), pp. 83-87.

¹²⁴ Ira Reiss, *Journey into Sexuality*, Englewood Cliff, NJ: Prentice Hall, 1986.

¹²⁵ Kwame Gyekye, *African Cultural Values. An Introduction*, Lansing: Sankofa, 1996.

¹²⁶ Judith K. Balswick, Jack O. Balswick, *Authentic Human Sexuality, An Integrated Christian Approach*, Downers Grove, IL: IVP, 2008.

uphold Africa's family values which they consider to be under attack by the homosexual practice.¹²⁷

African initiation ceremonies prepare young people for marriage. For instance, circumcision and clitoridectomy symbolically represent the flow of life through the shedding of blood from the reproductive organs. These initiation rituals further symbolize a solemn obligation to the young people to get married and bear children.¹²⁸ The Shona of Zimbabwe have a ritual for young boys which tests their fertility. The boy undergoes a traditional test for fertility in which he is made to masturbate and his semen is dropped into water, if the semen sinks it is thought to be strong and fertile, but if it floats it is considered weak and infertile and the boy may be given traditional medicines to improve his fertility.¹²⁹

Many African people think there is some strong moral reason to extend familial relationships by finding a (heterosexual) spouse and having children.¹³⁰ Therefore, homosexuality is considered to be against African cultural values of marriage since it involves same-sex partners and does not lead to procreation.

African Conceptions of Human Sexuality

Human sexuality in Africa occupies the central part of human life above anything else. Since sexuality is the stream of human life, it is perceived by all Africans as the heartbeat of society. The issues of sex, sexuality and gender in African societies are embedded in their stories of creation. It is taken for granted that all of these are part of God's creation and not a social construction of reality. By and large, many

¹²⁷ Max Fisher, "Mugabe Says of Obama's Gay Rights Push, 'We Ask was he Born out of Homosexuality?'" *Worldviews*, (25 .7.2013).

¹²⁸ John Mbiti, *An Introduction to African Traditional Religion*, London: Heinemann, 1991.

¹²⁹ M.F.C. Bourdillon, *The Shona Peoples: An Ethnography of the Contemporary Shona, with Special Reference to their Religion*, Gweru: Mambo Press, 1982.

¹³⁰ Bénédet Bujo, *Foundations of an African Ethic: Beyond the Universal Claims of Western Morality*, trans. Brian McNeil, New York: Crossroad, 2001.

African societies have myths which account to the earthly existence of human beings. Many of these stories are similar but not identical with the Biblical stories of creation.¹³¹

John Mbiti in *African Traditional Religions and Philosophy* gives a wide array of creation myths collected from across Africa. They are found among the Abaluyia, Lozi, Mende, Akamba, Basutho, Shona, Maasai, Bannyoro, Shilluk, Ovimbundu, Luo, Ewe etc. The first human beings are said to have come from various sources including, among others, clay, a hole or marsh in the ground, a tree, a vessel, a leg or knee, clouds, heaven, or another world out there.¹³² The common feature of such stories is that human beings appear on earth in pairs as male and female, as husband and wife right from the time of creation by divine providence. In most of these myths the husband was created first and then the wife. In other myths, however, man and woman or husband and wife appear at the same time very much like in the first biblical story of creation in Gen 1:26 where it is stated that when God created human beings he created them male and female by divine command.¹³³

There is a connection between the general myths of creation of the African people and the emergence of human sexuality.¹³⁴ Fr. John Ganly collected one of such myths from the Kaonde people of Zambia. According to this myth, at the beginning God created two people, Mulonga and Mwinambuzhi, who were to become the first man and the first woman. When God created them they had not been differentiated into male and female. They also lacked other organs to relieve themselves. They, therefore, asked God for some help. God gave them some packets and ordered them to put them on their crotches before they went to bed. They did this and when they woke up the following morning they found

¹³¹ <http://inerela.org/2010/07/demythologizing-african-conceptions-of-human-sexuality-a-gateway-to-prevention-and-eradication-of-hiv-and-aids-in-africa-prof-james-n-amanze/> (19.4.2016).

¹³² John Mbiti, *African Traditional Religions and Philosophy*, London: Heinemann, 1969.

¹³³ <http://inerela.org/2010/07/demythologizing-african-conceptions-of-human-sexuality-a-gateway-to-prevention-and-eradication-of-hiv-and-aids-in-africa-prof-james-n-amanze/> (19.4.2016).

¹³⁴ Ibid.

that they were changed. Mulonga turned into a man while Mwina-mbuzhi turned into a woman. Then, suddenly, they desired each other and had sexual intercourse. However, they were afraid of this new thing. Thereupon they went to ask God whether this thing of knowing one another was good. God told them that they should not be afraid of knowing one another because this was the way in which the woman would conceive and bear children and fill the earth.¹³⁵

The Shona of Zimbabwe also have a myth pointing to the connection between sex and human sexuality.¹³⁶ According to this myth, in the beginning Mwari created Mwedzi under a pool. Mwedzi complained to God that he wanted to go out of the pool with Massasi, who was a beautiful wife created by Mwari. Mwedzi and Massasi went under a cave. Mwedzi had a medicine horn. He grabbed it and rubbed its oil on his index finger. Mwedzi dipped his horn in Massasi and out came all vegetation and the rest of human beings. Massasi returned to the pool and Mwedzi complained to Mwari again. He was given a second wife called Murongo. They had fireworks in a cave and produced a number of daughters. Later Murongo ran away due to Mwedzi's demands which were intolerable. Murongo became promiscuous and was bitten by a snake and was returned into the pool by his daughters.¹³⁷

Sexual language is encoded in the stories of the African myths. Thus, from an anthropological perspective, we know that the terms such as the "pool" and "water" mean femininity. They represent women, womanhood and female genitalia in general. They are symbols of life for it is through them that life comes into existence. The horn and the finger in the story represent manhood, the male genitalia, the penis,

¹³⁵ Fr. John Ganly in Joseph G. Healey, *Once upon a Time in Africa: Stories of Wisdom and Joy*, New York: Orbis Books, 2004.

¹³⁶ <http://inerela.org/2010/07/demythologizing-african-conceptions-of-human-sexuality-a-gateway-to-prevention-and-eradication-of-hiv-and-aids-in-africa-prof-james-n-amanze/> (19.4.2016).

¹³⁷ Canaan Banana, *Come and Share: An introduction to Christian Theology*, Gweru: Mambo Press, 1991.

which is often dipped into the female sex organ, the vagina, for reproduction or for pleasure. The terms "fireworks" and "knowing" are used metaphorically to mean sexual intercourse. All of these are encoded in the stories and they make sense only to the initiated and this is where the problem of sexual language requiring demythologizing begins.¹³⁸ The African creation myths agree that human life started with a husband and a wife. Therefore, it must also continue in the same way.¹³⁹

African Cultural and Moral Values Placed on the Institution of Marriage

Traditional African societies define marriage as a legally or formally recognized union of a man and a woman as partners in a relationship which constitutes a family.¹⁴⁰ This heterosexual understanding of marriage is at odds with a homosexual understanding of marriage which involves a union of people of the same sex. Hence, the cultural argument against homosexuality seems to be appealing to many Africans. Political, religious and traditional leaders in Africa have exploited this cultural argument against homosexuality to their advantage.

Marriage fulfills the obligation, the duty and the custom that every normal person should get married and bear children. Failure to get married is like committing a crime against traditional beliefs and practices.¹⁴¹ Marriage and procreation in African communities are a unity: without procreation marriage is incomplete.¹⁴² Therefore, homosexuality is considered to be against African cultural values of

¹³⁸ <http://inerela.org/2010/07/demythologizing-african-conceptions-of-human-sexuality-a-gateway-to-prevention-and-eradication-of-hiv-and-aids-in-africa-prof-james-n-amanze/> (19.4.2016).

¹³⁹ John Mbiti, *An Introduction to African Traditional Religion*, London: Heinemann, 1991.

¹⁴⁰ Kwame Gyekye, *African Cultural Values, an Introduction*, Lansing, MI: Sankofa, 1996.

¹⁴¹ John Mbiti, *An Introduction to African Traditional Religion*, London: Heinemann, 1991.

¹⁴² Ibid.

marriage since it involves same-sex partners and does not lead to procreation.

An important moral question to be raised in the homosexuality debate is: when two people of the same sex interact to produce orgasms, what are the likely benefits of such an encounter? Homosexual practice is often considered a morally abhorrent act in many African communities where the purpose of orgasms is not only for sexual gratification but also to produce offspring.¹⁴³ Africans highly values marriage and procreation.¹⁴⁴

Procreation is a religious obligation by means of which the individual contributes to the seeds of life towards man's struggle against the loss of original immortality. Biologically both husband and wife are reproduced in their children, thus perpetuating the chain of humanity. Consequently, a person who does not have children in effect extinguishes the fire of life and becomes forever dead since his line of physical continuation is blocked.¹⁴⁵ Marriage provides heirs through procreation for the perpetuation of kinship and it helps in expanding the scopes of the lineage and kinship systems.¹⁴⁶

Africans value procreation far more than other aspects of marriage such as love, companionship and sexual pleasure. Infertility is seen as a negation of life, the destruction of the individual and the community.¹⁴⁷ Marriage and procreation are intertwined and inseparable in Africa. It is almost always presumed that readiness for marriage is readiness for procreation; to get married is an opportunity to contribute freely,

¹⁴³ Lanre-Abass Bolatio, "The Natural Law Theory of Morality and the Homosexuality Debate in an African Culture," <http://dx.doi.org/10.4314/og.v9i1.10>, (10.12.2015).

¹⁴⁴ Samuel Waje Kunhiyop, *African Christian Ethics*, Nairobi: Hippo Books, 2008.

¹⁴⁵ John Mbiti, "African Concept of Human Relations," *Ministry* 9 (1969), p.160.

¹⁴⁶ Ebele John Ayah, "The Family as the Basic Structure of Society in Catholic Social Teaching and Communitarian Thought: An Assessment in Light of the Sociology of the Family," PhD, Katholieke Universiteit Leuven, 2005.

¹⁴⁷ Samuel Waje Kunhiyop, *African Christian Ethics*, Nairobi: Hippo Books, 2008.

through procreation, to the survival of the lineage and society at large.¹⁴⁸

The idea of procreation as the main purpose of marriage is not universal. For instance, in Western societies a couple may choose not to have children.¹⁴⁹ Therefore, in such societies they would view the African cultural and moral argument for denouncing homosexuality on the basis of procreation as incomplete.

Nevertheless, the significance of marriage and procreation cannot be underestimated in many African societies. Traditionally, the purpose of marriage was procreation. Children were regarded as the seal of marriage. Parents had the role of looking after the well-being and development of their children, yet the whole community shared responsibility for child rearing.¹⁵⁰

Procreation should not be viewed as the only essence of marriage; companionship also gives marriage its meaning.¹⁵¹ Defining marriage solely on the basis of its procreative function strips marriage of some of its vital aspects and meaning.¹⁵² Companionship and mutual assistance between married partners is a vital purpose of marriage that also deserves attention. The companionship of married couples rooted in love constitutes enough grounds for happy married life even without children. With love for each other, married couple can also enjoy sex

¹⁴⁸ A.I. Abasili, 'Seeing Tamar through the Prism of an African Woman: A Contextual Reading of Genesis 38'. <http://home.medewerker.uva.nl/a.brenner/bestanden/Abasili.pdf>. (10.11.2015).

¹⁴⁹ Arthur G. Neal, H. Theodore Groat and Jerry W. Wicks, "Attitudes about Having Children: A Study of 600 Couples in the Early Years of Marriage," *Journal of Marriage and Family*, Vol. 51, No. 2 (May, 1989), pp. 313-327.

¹⁵⁰ M. Gecaga, "The Plight of the African Child: Reflections on the Response of the Church," *Studies in World Christianity*, Vol 13, Number 2, (2007), pp. 142-159.

¹⁵¹ A.I. Abasili, "Seeing Tamar through the Prism of an African woman: A Contextual reading of Genesis 38," <http://home.medewerker.uva.nl/a.brenner/bestanden/Abasili.pdf>. (2012), (10.11.2015).

¹⁵² L.J Waite and M. Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially*, New York: Doubleday, 2000, p. 79.

that is noble, and both emotionally and physically fulfilling because such pleasure is also part of marital or conjugal love and life.¹⁵³

The basis of African emphasis on procreation is that the religious values associated with sex are concentrated on procreation and not on sexual activity as such.¹⁵⁴ For this reason, sex between married couples is seen primarily as an act of procreation not mere satisfaction.¹⁵⁵ The practice of voluntary childlessness among couples in some parts of the world in which couples for various reasons voluntarily abstain from having children, is foreign to many African cultures.¹⁵⁶ When applied to the homosexuality debate, therefore, the implication is that both men and women are not expected to remain unmarried and not to talk of engaging in same sex relationships or marriage. This accounts for why childless couples are sometimes subjected to family pressure. The parents and the relatives of such couples will consistently reiterate the consequences of dying childless or without an heir. To avoid this type of pressure, some men divorce their wives and marry another that can give them a child or go into polygamy.¹⁵⁷

In view of the above observations, I am of the view that homosexuality is completely out of place in many African societies because it does not lead to procreation.

Homosexuality and Ubuntu

This section of the book discusses homosexuality in relation to the Ubuntu African philosophy or worldview.

¹⁵³ Lanre-Abass Bolatio, "The Natural Law Theory of Morality and the Homosexuality Debate in an African Culture," <http://dx.doi.org/10.4314/og.v9i1.10>, (10.12.2015).

¹⁵⁴ Lucy Mair, *African Marriage and Social Change*, London: Frank Cass, 1969.

¹⁵⁵ K. Abimbola, *Yoruba Culture: A Philosophical Account*, Birmingham: Iroko Academic Publishers, 2006.

¹⁵⁶ J.E. Veevers, "Voluntary Childlessness: A Review of Issues and Evidence," *Marriage & Family Review*, Vol 2, Issue 2, 1979.

¹⁵⁷ Lanre-Abass Bolatio, "The Natural Law Theory of Morality and the Homosexuality Debate in an African Culture," <http://dx.doi.org/10.4314/og.v9i1.10>, (10.12.2015).

Definition of Ubuntu

The concept of *Ubuntu* provides a good starting point for understanding sub-Saharan African morality. *Ubuntu* is the basis of African communal cultural life. It expresses "our interconnectedness, our common humanity and the responsibility to each other that deeply flows from our deeply felt connection."¹⁵⁸

The form of the word *Ubuntu* (and all equivalent forms in neighbouring languages) is purely productive in the morphological linguistic sense. It is the result of coupling the prefix generating abstract words and concepts (i.e. *ubu*, in the Nguni languages) to the general root- *ntu* which one and a half centuries ago persuaded the pioneering German linguist Bleek¹⁵⁹ to recognize a large Bantu speaking family: the entire group of languages, spoken from the Cape to the Sudanic belt, where the root *ntu* stands for 'human'. Several morphological combinations involving the root *ntu* are possible in any Bantu language; e.g. in the Nkoya language of western central Zambia, the following forms appear: *shintu* 'human', *muntu* 'a human', *bantu* 'humans, people', *wuntu* 'human-ness, the quality of being human, humanity (as a quality, not as a collective noun denoting all humans)' *kantu* 'Mr. Human', *Buntu* 'the country of humankind', etc.¹⁶⁰

Ubuntu is referred to differently in different African Bantu languages. For instance, it is *umunthu* in Chewa, *umundu* in Yawo, *bunhu* in Tsonga, *unhu* in Shona, *botho* in Sotho or Tswana, *ubuntu* in Zulu, Xhosa, and Ndebele, *vhutu* in Venda, and *vumunhu* in Shangaani.¹⁶¹

¹⁵⁸ B. Nussbaum, "African Culture and Ubuntu: Reflections of a South African in America," *World Business Academy*, 17(1) 2003.

¹⁵⁹ W. Bleek, "De Nominum Generibus Linguarum Africae Australis, Copticae, Semiticarum Aliarumque Sexualium," PhD, Bonn University, 1851.

¹⁶⁰ Wim van Binsbergen, "Ubuntu," www.researchgate.net/publication/28646488, (21.12.2015).

¹⁶¹ Richard Tambulasi, Happy Kayuni, "Can African Feet Divorce Western Shoes? The Case of 'Ubuntu' and Democratic Good Governance in Malawi", *Nordic Journal of African Studies*, Vol. 14, No. 2 (2005), p. 147.

The cardinal spirit of *Ubuntu* is expressed in Xhosa; one of South Africa's eleven official languages, as *Umntu ngumntu ngabanye abantu*, understood in English as "People are people through other people" and "I am human because I belong to the human community and I view and treat others accordingly."¹⁶² *Ubuntu* is the capacity in African culture to express companionship, reciprocity, dignity, harmony and humanity in the interest of building and maintaining community with justice and mutual caring.¹⁶³ From this inherently humane and humanistic perspective, only by being members of this universal human community can and do we fully know, experience, and express ourselves as individuals.¹⁶⁴ Therefore, one can differentiate the unbridled individualism¹⁶⁵ of Western morality and the communitarianism¹⁶⁶ of African morality. Consequently, this difference has repercussions on the acceptance of homosexuality. For instance, homosexuality is easily accepted in Western societies because of the emphasis placed on individual rights while in African societies homosexuality is resisted because it is considered as a discord variable in the community.

The essence of Ubuntu is found in many African proverbs and idiomatic expressions. For instance, "*Motho ke motho ka batho*" (Sotho), literally translated to: A person is a person through other persons. "*Rintiho rinwe a ri nusi hove*" (Shangaani), literally translated to: One finger cannot pick up a grain.¹⁶⁷ "*Chala chimodzi sichinswa nsabwe*" (Chewa) literally translated to: One finger cannot kill a lice. "*Mutu umodzi susenza denga*" (Chewa), literally translated as: 'One head cannot lift or carry a roof.' "*Mwana wa nzako ndi wako yemwe*" (Chewa) literally

¹⁶² Kevin Chaplin, "The Ubuntu Spirit in African Communities," www.academia.edu/7502932/Ubuntu_PDF (21.12.2015).

¹⁶³ B. Nussbaum, "African Culture and Ubuntu: Reflections of a South African in America," *World Business Academy* 17(1), 2003.

¹⁶⁴ www.South African Ubuntu Foundation 2013, (21.12.2015).

¹⁶⁵ N. K. Dzobo, "Values in a Changing Society: Man, Ancestors and God, Person and Community," ed. Wiredu and Gyekye, p. 226.

¹⁶⁶ N. Mkhize, *Ubuntu and Harmony: an African Approach to Morality and Ethics*, Pietermaritzburg: University of KwaZulu-Natal Press, 2008.

¹⁶⁷ Reuel Khoza, *Ubuntu Botho Vumunhu Vhuthu African Humanism*, Soweto: Ekhasya Promotions, 1994.

translated to: someone's child is your child; "*Ali awiri ndi anthu kali kokha nkanyama*" (Chewa), literally translated as: Two are people, a single person is an animal; and *lende nkukankhana* (Chewa), literally translated as: One prospers with the help of others.¹⁶⁸ These expressions abound in all African languages and reflect on Ubuntu's basic orientation that one's humanity is dependent upon one's relationships with others.

The nature of harmony or community in African thought can be divided into two categories. First, there is the idea that one has a moral obligation to be concerned for the good of others, in terms of both one's sympathetic emotional reactions toward other people and one's helpful behaviour toward them. In short, one has a duty to exhibit solidarity with others. Second, there is the idea that one has a moral obligation to think of oneself as bound up with others, that is, to define oneself as a member of a common group and to participate in its practices. One also has a duty to identify oneself with others. Community or harmony is the combination of both solidarity and identity, so construed.¹⁶⁹ One finds implicit references to both elements in the following illustrative statements about community (harmony). "Every member is expected to consider him/herself an integral part of the whole and to play an appropriate role towards achieving the good of all' and 'The fundamental meaning of community is the sharing of an overall way of life, inspired by the notion of integral part of the whole and to play an appropriate role towards achieving the good of all."¹⁷⁰ "Harmony is achieved through close and sympathetic social relations within the group."¹⁷¹ "The fundamental meaning of community is the sharing of an overall

¹⁶⁸ Richard Tambulasi, Happy Kayuni, "Can African Feet Divorce Western Shoes? The Case of 'Ubuntu' and Democratic Good Governance in Malawi", *Nordic Journal of African Studies*, Vol. 14, No. 2 (2005), p. 147.

¹⁶⁹ T. Metz, "Toward an African Moral Theory," *Journal of Political Philosophy*, 15(3), (2007), pp. 321–341.

¹⁷⁰ S. Gbadegesin, *African Philosophy: Traditional Yoruba Philosophy and Contemporary African Realities*, New York: Peter Lang. 1991.

¹⁷¹ Y. Mokgoro, "Ubuntu and the Law in South Africa," *Potchefstroom Electronic Law Journal*, 1(1), (1998) pp. 15–26.

way of life, inspired by the notion of the common good"¹⁷² and "The purpose of our life is community-service and community-belongingness."¹⁷³

Ubuntu morality is against the libertarian argument which calls for liberty or freedom of the individual person and totally opposes the social or political restraints on human individual freedom.¹⁷⁴ The libertarian argument justifies acts of homosexuality using the harm principle because if homosexual individuals are given equal rights and treatment, provided it harms no one else, then for them, there seem to be no problem at all. Hence, society should not impose formal or informal sanctions or social pressure on individuals with homosexual orientation. According to this argument, the denial of freedom, equality and the rights to same-sex relationships and couples to have homosexual sex and marry is a gross violation of the principle of equality and the safeguard of human individual liberty.¹⁷⁵ On the contrary, *Ubuntu* ethics considers that a community's moral life is lived in conformity to established practices.¹⁷⁶ Therefore, if a particular African community abhors homosexuality, it follows automatically that no individual freedom can justify the homosexual practice.

Homosexuality is considered as a disruptive variable in some African societies. For instance, the judge who sentenced Malawi's gay couple: Steven Monjeza and Tiwonge Chimbalanga to 14 years imprisonment insinuated that the two were corrupting the nation; hence, the public needed to be protected from their horrendous example.¹⁷⁷ In other

¹⁷² K. Gyekye, *Beyond Cultures: Perceiving a Common Humanity*, Washington, DC: The Council for Research in Values and Philosophy, 2004.

¹⁷³ P. Iroegbu, *Beginning, Purpose and End of Life*, in: P. Iroegbu & A. Echekwube (eds.) *Kpim of Morality Ethics: General, Special & Professional*, Ibadan: Heinemann Educational Books, 2005.

¹⁷⁴ J. Rachels and J. Rachels, *The Truth about the World*, New York: McGraw-Hill, 2008.

¹⁷⁵ J. Boss, *Analyzing Moral Issues*, New York: McGraw-Hill, 2009.

¹⁷⁶ P.H. Coetzee, "Morality in African Thought," in the *African Philosophy Reader*, CT: Oxford University Press, 2000.

¹⁷⁷ [www.malawilii.org/mw/judgment/high-court-general-division/2010/2,\(21.112.2015\).](http://www.malawilii.org/mw/judgment/high-court-general-division/2010/2,(21.112.2015).)

words, the judge considered homosexuality as a threat to harmony existing in the Malawian community.

Influence of Ubuntu on the Homosexual Debate in Africa

The influence of Ubuntu morality on the homosexual debate in Africa is twofold. First, Ubuntu prescribes and articulates a way of being that is about caring and respect for the person as well as your elders, human dignity, compassion, non-discrimination, reaching out to others at times of sorrow and happiness, respect for your elders, being charitable towards those that have less than you do and "*If you lack Ubuntu then you have no humanity.*"¹⁷⁸ Therefore, people with a different sexual orientation are embraced by the *Ubuntu* philosophy because they are simply human beings.

Ubuntu subordinates the individual to the community as the rights of the community come before those of an individual. According to *Ubuntu*, whatever happens to the individual happens to the community and vice versa. This is demonstrated at times of celebration (birth of a child or a wedding) and at times of sorrow (death). The community handles such matters as one.¹⁷⁹ How then do we reconcile *Ubuntu* with the rampant homophobic speeches and behaviour in Africa? The killing of people because of their sexual preference or because they are different is contrary to the *Ubuntu* morality. In other words, as Thorne Godinho argues all individuals form part of the community and must be respected as full members thereof. Therefore, any challenge to LGBT Africans' dignity and rightful place in the community is un-African.¹⁸⁰

Second, the influence of *Ubuntu* on the homosexual debate in Africa can be seen in its suppression of individualistic lifestyle in favour of a communitarian lifestyle. Louw argues that *Ubuntu* can be coercive by

¹⁷⁸ Eze O, M "Ubuntu: Ideology or Promise? In Exploring Humanity," www.academia.edu/9029956/_Ubuntu_Ideology_or_Promise_in_Exploring, (21.12.2015).

¹⁷⁹ J.D. Louw, "Ubuntu: African Assessment of the Religious other: Paper given at the Twentieth World Congress of Philosophy," www.bu.edu/wcp/Papers/Afri/AfriLouw.htm, (6.18.2016).

¹⁸⁰ Thorne Godinho, "Your Homophobia is Un-African," *Mail & Guardian*, (21.1.2014).

virtue of its communitarian nature and the desire to reach consensus. This happens when an individual is expected to conform to community norms in spite of what he wants. An individual must not elevate his needs over and above those of the community and if he does he risks sanctions and punishment from the community.¹⁸¹ Correspondingly, homosexuality is disdained in the community because heterosexuality and procreation are normative for the African family.

Although *Ubuntu* philosophy maintains human dignity; its communitarian aspect subordinates individual freedoms to those of the community taking away the very essence of being a human person.¹⁸² In this way, *Ubuntu* philosophy does not just accept anything for the sake of achieving harmony in the community. It condemns all behaviours that are contrary to the values, beliefs, traditions and customs of the community. Therefore, since homosexuality is contrary to African concepts of sexuality and marriage, Ubuntu morality condemns it.

Understanding the Myth that Homosexuality is un-African

One of the oldest and most enduring myths Europeans created about Africa is the myth that homosexuality is absent or incidental in African societies. According to European thinking, the African had to be heterosexual because of being the most primitive man, ruled by instinct, close to nature and culturally unsophisticated.¹⁸³ Africans as the "primitive man" were associated with nature, driven by instinct, and considered culturally unsophisticated. Their sexual energies and outlets were seen as devoted exclusively to their natural purpose of biological reproduction.¹⁸⁴

¹⁸¹ J.D. Louw, "Ubuntu: African Assessment of the Religious other: Paper given at the Twentieth World Congress of Philosophy," www.bu.edu/wcp/Papers/Afri/AfriLouw.htm, (6.18.2016).

¹⁸² Ida Horner, "Human Rights for Gay people in Uganda," www.africaontheblog.com, (12.12.2015).

¹⁸³ Stephen Murray, and Will Roscoe, (eds.), *Boy-Wives and Female Husbands: Studies of African Homosexualities*, London: Macmillan, 1998.

¹⁸⁴ Busangokwakhe Dlamini, "Homosexuality in the African Context. Agenda: Empowering Women for Gender Equity" 20(67): (2006), pp. 128-136.

Sexualization of primitive Africans as heterosexuals and not homosexuals can be traced to Edward Gibbon's comments in his *History of the Decline and fall of the Roman Empire*.¹⁸⁵ When it was published in 1781, hardly any Europeans had travelled more than a few miles into the African interior. Still, Gibbon, wrote, "I believe, and hope, that the Negroes, in their own country, were exempt from this moral pestilence [i.e., homosexual 'vice']".¹⁸⁶

Several ethnographers have supported Gibbon's claim. For instance, Sir Richard Burton (1864) said that the Negroe race is mostly untainted by sodomy and tribadism.¹⁸⁷ This perception of African society was further perpetuated by ethnographers who claimed that homosexuality is un-African and that Africa is a sodomy free zone in an effort to prepare public opinion for the abolition of the slave trade and reinforcing negative attitudes towards homosexuality in Europe.¹⁸⁸ The intention was that by presenting Africa as a continent free of homosexuality, people would look at slavery less favorably. To encourage an anti-slavery sentiment, Africa was consequently represented as a pure continent that has not been tainted by most of the vices of the West. Historically, at least in terms of a Western representation of Africa, homosexuality was thus mostly presented as absent from African cultures.¹⁸⁹

Another common narrative against homosexuality in Africa is that it is against cultural and moral values. Those who condemn homosexuality on such grounds, however, usually do not consider the context of these religious, cultural and morals values.¹⁹⁰ An examination of the relation-

¹⁸⁵ Edward Gibbon, *History of the Decline and fall of the Roman Empire*, New York: Fred de Fau and Co., 1906.

¹⁸⁶ Stephen Murray and Will Roscoe (eds.), *Boy-Wives and Female Husbands: Studies of African Homosexualities*, London: Macmillan, 1998.

¹⁸⁷ Ibid.

¹⁸⁸ Marc Epprecht, *Hetero Sexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS*, Athens, Ohio: University Press, 1998.

¹⁸⁹ Gabriel R. du Plessis, "What Mugabe Said: Homosexuality in Africa and the Problem of Context," MA, Masaryk University, 2014.

¹⁹⁰ Ibid.

ship between traditional African religions and same-sex practices established that African religions often associated spiritual power with sexuality. For instance, some tribal groups in pre-colonial South Africa and Burkina Faso saw lesbians as traditional healers and astrologers.¹⁹¹ In Cameroon and Gabon, certain tribes considered homosexuality to have medicinal powers. For these groups, homosexuality consequently had mostly positive connotations.¹⁹² Thus, the suggestion that homosexuality is abhorrent to all African traditional religions cannot be accepted wholesale.

European dominance in Africa irreversibly changed the indigenous social and religious spheres of African societies. A key tenet of the colonial ideology was to view African cultures and people as devoid of any important values and norms. As such, they were considered as prime candidates for the civilizing mission of European imperialists.¹⁹³ Christian missionaries, who brought education to the continent of Africa, inculcated Christian values and standards of behaviour, which denounced homosexuality.¹⁹⁴ For this reason, African leaders like Robert Mugabe of Zimbabwe,¹⁹⁵ and Daniel arap Moi of Kenya,¹⁹⁶ have publically condemned homosexuality by invoking a Christian moral framework. During an agricultural show in Nairobi in 1991, the former president of Kenya, Daniel arap Moi, stated that it is not right that a man should go with another man or a woman with another woman. It is against African tradition and Biblical teachings.¹⁹⁷ Therefore, Christianity validates African leaders' rejection of homosexuality, particularly

¹⁹¹ A. Swidler, *Homosexuality and World Religions*, Pennsylvania: Trinity, 1993.

¹⁹² Blessing-Miles Tendi, "African Myths about Homosexuality," *The Guardian*, (23.3.2010).

¹⁹³ Busangokwakhe Dlamini, "Homosexuality in the African Context. Agenda: Empowering Women for Gender Equity," 20(67): (2006) p. 130.

¹⁹⁴ Ibid.

¹⁹⁵ Ragies Masiwa Gunda, "The Bible and Homosexuality in Zimbabwe, A Socio-historical Analysis of the Political, Cultural and Christian Arguments in the Homosexual Debate with Special Use of the Bible," PhD, Bamberg: University of Bamberg Press, 2010.

¹⁹⁶ Reuters, (30.9.1990).

¹⁹⁷ Reddy Vasu, "Homophobia, Human Rights and Gay and Lesbian Equality in Africa. Africa, Agenda: Empowering Women for Gender Equity" 16(50): (2001) pp. 83-87.

through its premise that homosexuality is unholy (satanic) and prohibited by the Bible.¹⁹⁸ Consequently, Christianity is one of the principal means of silencing indigenous same-sex practices.¹⁹⁹

The myth that homosexuality is un-African is not based on any socio-historical evidence. On the contrary, the myth is anchored on an old practice of selectively invoking African culture by those in power in order to make political gains.²⁰⁰

Criminalization of Homosexuality in Africa

More than 50% of African governments have taken action and steps to formally criminalize same-sex unions. In March 2011, at the second recall of the United Nations Assembly in Geneva on the Joint Declaration to Decriminalize Homosexuality, the number of African countries who signed rose from six to eleven including Gabon, São Tomé and Príncipe, Mauritius, Central African Republic, Cape Verde, Guinea Bissau, Angola, South Africa, Seychelles, Rwanda and Sierra Leone, thirteen countries abstained and twenty-eight opposed the Joint Statement on Sexual Orientation and Gender Identity (SOGI).²⁰¹

The criminalization of homosexuality or same-sex sexual conduct constitutes a serious violation of basic rights. At the same time, it is a key driver and a source of legitimation to discrimination and all other human rights violations suffered by LGBTI persons in these countries. Sodomy laws, usually introduced by British colonial authorities – whether persisting in their original form, modified or re-created in post-independence penal codes – are frequently used to justify the on-going

¹⁹⁸ M. Sullivan and John S. Wodarski, "Social Alienation in Gay Youth," *Journal of Human Behaviour in the Social Environment* 5(1): (2002) pp. 1-17.

¹⁹⁹ Thabo Msibi, "The Lies We Have Been Told: On (Homo) Sexuality in Africa," *Africa Today* (2011) 58(1):55-77.

²⁰⁰ M. Strasser, "From Uganda to Russia, Homophobia Spreading Worldwide", *Newsweek*, (27.2.2013).

²⁰¹ Lucas Paoli Itaborahy and Jingshu Zhu, "State-Sponsored Homophobia, A World Survey of Laws: Criminalization, Protection and Recognition of same-Sex Love," ILGA, www.ilga.org, (May 2013), (12.11.2015).

human rights abuses suffered by LGBT persons.²⁰² Criminalization further leads to acts of harassment, humiliation, extortion, arbitrary arrests, judicial violence, imprisonment, torture, hate crimes and honour killings on the grounds of sexual orientation and gender identity all over Africa.²⁰³

Why is there an Increase in the Criminalization of Homosexuality in Africa?

According to some scholars, eight factors have been identified for the surge in homophobic legislation and behaviour in Africa. Firstly, Africa is a deeply religious continent in which the fastest growing denominations of both Christianity and Islam take an uncompromising stand against homosexuality. For example, in Nigeria, a country of high religious-sectarian tensions, opposition to homosexuality serves as a uniting factor in the religious divide.²⁰⁴ President Yoweri Museveni of Uganda got a popular applause from religious leaders after signing the Anti-Homosexuality Act.²⁰⁵

Secondly, religious extremists from outside Africa have seized the opportunity by advancing their agenda in Africa. For instance, evangelist Scott Lively visited Uganda in 2009 giving lectures entitled: "Exposing the Homosexual Agenda." Rev Scott Lively's lectures on homosexuality served as a catalyst for the homosexual controversy in Uganda. The support rendered by such people to the growing Pentecostal movement in Africa threatens the mainline churches, which in turn fight back with

²⁰² Dimitrina Petrova, "The Use of Equality and Anti-Discrimination Law in Advancing LGBT Rights," In Corinne Lennox & Matthew Waites (eds.), *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalization and Change*, London: School of Advanced Study, University of London, 2013, pp. 477-505.

²⁰³ Lucas Paoli Itaborahy and Jingshu Zhu, "State-Sponsored Homophobia, A World Survey of Laws: Criminalization, Protection and Recognition of same-Sex Love," ILGA, www.ilga.org, (May 2013), (12.11.2015).

²⁰⁴ Jonah Fisher, Nigerian Leaders Unite against Same-Sex Marriages, *BBC News*, (5.12.2011).

²⁰⁵ Richard Downie, Revitalizing the Fight against Homophobia in Africa, A Report of the CSIS Global Health Center, May 2014, (12.11.2015).

their own extremism in a bid to retain their influence and congregations. Consequently, the Anglican Church in Uganda has become stridently homophobic, even at the cost of opening up an already growing split in the global communion.²⁰⁶

Thirdly, homophobia is widespread and ingrained in African society, providing an opportunity for governments to use prejudice in order to mobilize popular support. Political expediency is an important driver of state-sanctioned homophobia. For insecure autocrats, populist antigay discrimination works, at least in the short term. It plays well with large sections of the public and provides opportunities to score points against overbearing donors who criticize it. Thus, President Museveni's decision to sign the Anti-Homosexuality Act was driven by political calculations that it will boost his political support rather than moral opposition to homosexuality as a vice in society. President Museveni, who was at that time in the 29th year of his presidency, used the populist agenda to outsmart his political rival, the Speaker of Parliament, Rebecca Kadaga, who had championed the anti-homosexual bill. His domestic support based on the Anti-Homosexual Act outweighed Western sanctions.²⁰⁷

Fourthly, the downside of democratization partly explains the proliferation of antigay laws in Africa. One of the unintended consequences of encouraging democratic development is that it opens up the field to political debate. Newly independent and assertive legislatures can provide platforms for parliamentarians to launch campaigns against the LGBT community, creating competitive bigotry between legislatures and the executives.²⁰⁸ In this case, David Bahati, the Ugandan MP who originally introduced the legislation as a private members bill in 2009 serves as an example of a parliamentarian seeking to retain his seat by taking a populist cause.

²⁰⁶ Kapya Kaoma, "Exporting the Anti-Gay Movement", *The American Prospect* 23 (4). (5.2012).

²⁰⁷ Richard Downie, Revitalizing the Fight against Homophobia in Africa, A Report of the CSIS Global Health Center, May 2014, (12.11.2015).

²⁰⁸ Ibid.

Fifthly, African governments are beginning to understand that the goal of achieving an HIV/AIDS free generation lies in reaching out to the LGBTI community as a legitimate population. However, some African governments ridicule this idea of reaching out to the LGBTI community. Moreover, African governments find themselves at loggerheads with the western donors who demand that part of their funding should specifically target the LGBTI community, for instance, the Global Fund to fight against HIV/AIDS, Tuberculosis, and Malaria.²⁰⁹ This is the dilemma facing the Government of Malawi which criminalizes homosexuality yet gets funding from the Global Fund.²¹⁰ Consequently, this double standard approach by the Malawi Government forces it to use homophobia as a way of silencing critics on its LGBTI and health policies.

Sixthly, antigay rhetoric and legislation can be used as tools to push back Western imperialism. African governments feel that arrogant donors from Europe and North America are imposing a new global norm of legitimatizing LGBTI populations. Hence, they respond by asserting their independence through the rhetoric of 'African' culture and values.²¹¹ African leaders like Senegal's Mackay Sall, Sierra Leone's Ernest Bai Koroma and Liberia's Ellen Johnson Sirleaf have linked the issue of gay rights with external interference reflecting a perceived western cultural imperialism.²¹²

²⁰⁹ "Global Fund Gives Malawi Record \$ 380 Million Grant: Deepen Partnership to Fight HIV, TB, and Malaria," *Nyasa Times*, (22.10.2015).

²¹⁰ Mavuto Banda, "Gay Rights Way to Fight AIDS in Malawi-Official," *Reuters*, (15.9.2009).

²¹¹ Lucas Paoli Itaborahy and Jingshu Zhu, "State-Sponsored Homophobia, A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love," ILGA, www.ilga.org, (May 2013), (12.11.2015).

²¹² For example, during President Obama's visit to Senegal in June 2013, President Mackay Sall, when asked by an American journalist why Senegal criminalized homosexuality, argued that cultural norms were country specific. He then pointedly referred to the use of capital punishment in parts of the US to argue against external interference in matters of culture: "In our country, we abolished the death penalty for many years. In other countries, it is still the order of the day, because the situation in the country requires it. And we do respect the choice of each country." Evan McMorris-Santoro,

Seventh, the spread of legislation against LGBTI communities has a contagious effect in Africa, with nations drawing confidence from the bigotry of their neighbours. State-sanctioned homophobia is generating momentum, creating comfort in numbers. The spotlight has shifted from Uganda and Nigeria to other African countries. For instance, in the Democratic Republic of Congo, a draft bill presented in National assembly would outlaw homosexuality for the first time and where a previous bill floated in 2010 placed homosexuality and zoophilia in the same category of offences. In Ethiopia, lawmakers have been considering a bill to make it an unpardonable offence ranking alongside terrorism. There are concerns that Kenya might be the next battleground against discrimination: a caucus of members of parliament has been formed to agitate for tougher penalties against homosexuality.²¹³

Eighth, some Civil Society Organizations (CSO) in Africa have mounted little effective pushback against homophobia. In most cases, civil society organizations are poorly organized, lack unity, and are censored by the government which limits their influence and access to funding.²¹⁴

Therefore, I am of the opinion that African politicians are advancing homophobic legislation because it bolsters their popular support with the majority of African people who are against homosexuality.

Criminalization of Same-Sex Practices and its Impact on LGBTI Rights in Africa

Sodomy laws have an extremely damaging impact on the protection of the LGBT community even when not enforced. They create an underlying condition which legitimizes and reinforces the broader discrimination against the LGBTI community.²¹⁵ For instance, denying people of a different sexual orientation their fundamental rights to freedom of

"Senegalese President Defends Jailing LGBT Citizens, Hits Obama over Death Penalty," *Buzz Feed*, 27 June 2013.

²¹³ Richard Downie, *Revitalizing the Fight against Homophobia in Africa*, A Report of the CSIS Global Health Center, May 2014, (12.11.2015).

²¹⁴ Ibid.

²¹⁵ Ibid.

expression, association and assembly, equality in healthcare, criminal justice, education, employment and other spheres of political and social life. The Ugandan Anti-Homosexuality Bill which was brought before parliament in October 2009 was an example of how broader strategies to criminalize homosexual conduct can potentially entrench systematic discrimination for LGBTI persons. It gave explicitly legal expression of the discriminatory consequences that in other countries are tacitly drawn from the existing prohibition of homosexuality.²¹⁶

Criminalization of same-sex practices also leads to discrimination in the criminal justice system. LGBTI persons face arbitrary arrest and imprisonment in some African countries. For example, in Malawi, on 28 December 2009, Tiwonge Chimbalanga and Stephen Monjeza were arrested on multiple charges of "unnatural practices" and "gross indecency" following Malawi's first openly same-sex engagement celebration on 28 December 2009.²¹⁷ In Tanzania, in June 2009, well-known gay activists Zuberi Juma and Ibrahim Ramadhani were arrested and charged with debauchery. In September 2009, 39 gay and lesbian activists were arrested in the Buguruni area of Daressalam. Following reports of lawlessness in the area, police singled out the gay activists as "prostitutes" and "vagrants" and charged them with operating as commercial sex workers under Section 176(a) of the Penal Code.²¹⁸

²¹⁶ The Bill proposed several new offences within Ugandan criminal law. These include: (1) 'The offence of homosexuality' which under Article 2 criminalizes same-sex sexual conduct (including 'touching with the intention to commit the act of homosexuality') and carries a penalty of life imprisonment; (2) 'Aggravated homosexuality' under Article 3 which imposes the death penalty on persons who are found guilty of committing 'homosexuality' in a range of 'aggravated' circumstances including 'committing homosexuality with persons under the age of 18', and 'committing homosexuality' where the offender is living with HIV; and (3) 'Same-sex marriage which under Article 12 provides that people who contract a marriage with a person of the same sex are liable on conviction to life imprisonment.

²¹⁷ www.amnesty.org/en/region/malawi/report-2010, (10.1.2015).

²¹⁸ www.outrightinternational.org/content/tanzania-arbitrary... (13.11.2015).

Healthcare system is another key area where discrimination against LGBTI persons frequently occurs in countries that criminalize homosexuality. In February 2009, it was reported that a Rwandan lesbian woman was subjected to multiple rounds of questioning and degrading treatment based on her sexual orientation during a medical examination in a hospital in Kigali.²¹⁹ In June 2009, the first openly transgender woman in Tanzania suffered degrading treatment through the conduct and comments of doctors during treatment for possible poisoning and meningitis.²²⁰ Studies of the Senegalese MSM community following the conviction in 2008 of nine HIV-prevention workers for "acts against nature," suggest that they were less inclined to access prevention and treatment services.²²¹

The criminalization of homosexuality also results in discriminatory denial of freedom of expression, association and assembly for LGBTI persons.²²² Moreover, the offence of "promotion of homosexuality" within the Ugandan Anti-Homosexuality Bill specifically targets actions aimed at forming associations in support of LGBTI rights. For example, individuals or organizations are incriminated for participating in the production, procuring, marketing, broadcasting, or disseminating of materials for purposes of "promoting homosexuality" or where they offer premises and other related fixed or movable assets for purposes of homosexuality or for "promoting homosexuality."²²³

Homophobic legislation also emboldens the public to engage in vigilante and violent acts against LGBTI citizens. For example, David Kato, Ugandan gay rights campaigner was beaten to death at his home

²¹⁹ Global Rights and the International Gay and Lesbian Human Rights Commission 2007 (13.11.2015).

²²⁰ Ibid.

²²¹ Tonia Poteat et al., "HIV Risk among MSM in Senegal: A Qualitative Rapid Assessment of the Impact of Enforcing Laws that Criminalize Same-Sex Practices," *PLoS One* 6, no 12 (December 2011): e28760, www.ncbi.nlm.nih.gov/pmc/articles/PMC3237497/, (13.11.2015).

²²² www.hrw.org/reports/2009/06/10/together-apart, (13.11.2015)

²²³ www.hrw.org/news/2009/10/15/uganda-anti-homosexuality-bill... (13.11.2015)

in Mukono, in what activists believe was a homophobic attack in January 2011. Mr. Kato was running an LGBTI organization called the Sexual Minorities Uganda (SMUG). He had been receiving several death threats since his name, photograph and address were published by a newspaper called "*Rolling Stone*" in 2010 touting him as a homosexual and calling for his hanging. He was killed by someone who came into his house with a hammer, in what has been described as an "iron-bar killing."²²⁴ Also, since Nigeria passed homophobic laws, five men were convicted of homosexual conduct in Bauchi State. All were sentenced to 20 lashes under Islamic Sharia Law. During a preliminary hearing, an angry crowd gathered outside the court demanding the death penalty for the men, who claimed they were beaten in custody and forced to make confessions.²²⁵

I am of the view that criminalization of homosexuality creates significant obstacles for LGBTI citizens, activists, and NGO's. The African governments are enabled through this legislation to restrict the rights of LGBT citizens and deny LGBTI lobby groups the ability to effectively advocate. In other words, if LGBTI citizens and groups want to challenge the discriminatory laws and practices, they will essentially be challenging their respective governments.

Homophobic Practices in Africa

Homophobia encompasses a range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbians, gays, bisexuals, transsexuals and intersex.²²⁶ McCormack

²²⁴ "Ugandan Gay Rights Activist David Kato Killed," *BBC*, (27.1.2011).

²²⁵ "Nigeria Gays: 20 Lashes: for 'Homosexual Offences,'" *BBC News*, (6.3.2014).

²²⁶ Maurianne Adams, Lee Anne Bell, Pat Griffin, *Teaching for Diversity and Social Justice*, Routledge, 2007. Because of the complicated interplay between gender identity, gender roles, and sexual identity, transgender people are often assumed to be lesbian or gay because transgender identity challenges a binary conception of sexuality and gender, educators must clarify their own understanding of these concepts. ... Facilitators must be able to help participants understand the connections between sexism, heterosexism, and transgender oppression and the ways in which gender roles are maintained, in part, through homophobia.

says that homophobia can be expressed as antipathy, contempt, prejudice, aversion, or hatred. It may be based on irrational fear and is sometimes related to religious beliefs.²²⁷ Homophobia can be observed in critical and hostile behaviour such as discrimination and violence on the basis of sexual orientations that are non-heterosexual.²²⁸ Thus, this section of the book presents a discussion on the homophobic practices against homosexuality in Africa in view of the notion that homosexuality is un-African.

Homophobic Speeches by African Leaders

Homophobic speeches are a form of hate speech that attacks, offends, threatens, or insults an individual or a group of people based on their sexual orientation.²²⁹ African political leaders have made homophobic statements in the past two decades which have the potential of inciting violence and gross human rights violations against LGBTI people.²³⁰

Robert Mugabe Former President of Zimbabwe

Robert Mugabe, former president of Zimbabwe is one of the fiercest critics of homosexuality in Africa.²³¹ He opened the Zimbabwe International Book Fair (ZIBF) in Harare on August 1, 1995, under the theme

²²⁷ Mark McCormack, *The Declining Significance of Homophobia*, Oxford University Press, 2013.

²²⁸ Claire M. Renzetti, Jeffrey L. Edleson, *Encyclopedia of Interpersonal Violence*, New York: Sage Publications, 2008.

²²⁹ John Nockleby, "Hate Speech," in *Encyclopedia of the American Constitution*, ed. Leonard Levy and Kenneth Karst, vol. 3. (2nd ed.), Detroit: Macmillan Reference US, 2000.

²³⁰ President Daniel Arap Moi labelled homosexuality as a 'scourge' that goes against Christian teachings and African traditions, Reuters, 30 September 1990; President Sam Nujoma of Namibia announces purges against Gays, www.afrol.com, 20 March 2001; President Fredrick Chiluba of Zambia described homosexuality as abnormal and accused Zambians championing the practice of doing so for monetary gain from donors, *Times of Zambia*, 19 October 1998.

²³¹ Joshua Keating, "Mugabe: Homosexuality Destroys Nations," *The World*, (22.8.2013). He also used his address at the 2015 United Nations General Assembly to

"Human rights and justice."²³² He painted homosexuals as people who flaunted their sexual conduct shamelessly. Mugabe said:

If we accept homosexuality as a right, as is being argued by the association of sodomists and sexual perverts, what moral fiber shall our society ever have to deny organized drug addicts, or even those given to bestiality, the rights they might claim and allege they possess under the rubric of individual freedom and human rights, including the freedom of the Press to write, publish and publicize their literature on them.²³³

I am of the view that this attack on gays propelled a debate in Zimbabwe on the extent and meaning of human rights; particularly, sexual minority rights. Zimbabweans began to evaluate the homosexual discourse in view of African traditional values in comparison with the influence of foreign culture. Consequently, homosexuality was seen as an anathema to Zimbabwean culture.

Robert Mugabe also reacted to Prime Minister David Cameron's remarks of tying British aid to gay rights in Africa. He said:

Homosexuals are worse than pigs and dogs and anyone practicing it here will be severely punished... It becomes worse and Satanic when you get a prime minister like Cameron saying countries that want British aid should accept homosexuality... To come with that diabolical suggestion to our people is a stupid offer... it is impossible for John to marry Jack or Maria to marry Theresa... It is condemned by nature. It is condemned by insects and that is why I have said they are worse than pigs and dogs.²³⁴

attack gay rights. Rose Troup Buchanan, "Zimbabwe President Robert Mugabe tells UN General Assembly: 'We are not Gays,'" *The Independent*, (29.9.2015).

²³² President Robert Mugabe's opening Speech at Zimbabwe Book Fair, www.qrd.org/qrd/world/africa/zimbabwe/excerpt.of.mugabe.speech-08.03.95 (9. 5.2016).

²³³ Chris Dunton and Mai Palmberg, "Human Rights and Homosexuality in Southern Africa," *Current African Issues* 19, (1996), pp. 9-10.

²³⁴ Aislinn Laing, "Mugabe Calls David Cameron 'Satanic' for Backing Gay Rights," *The Telegraph*, (24.11.2011).

I am of the view that by branding homosexuality Satanic, Mugabe used a religious argument to denounce homosexuality. Satanism is considered as one of the greatest evils because it is a direct affront to God. In this way, he was able to win support of many Zimbabweans who are religious.

Robert Mugabe observed that the UN Human Rights Charter did not give states "the right to come to sit in judgment over others."

In that regard, we reject the politicization of this important issue and the application of double standards to victimize those who dare think and act independently of the self-anointed prefects of our time.

We equally reject attempts to prescribe "new rights" that are contrary to our values, norms, traditions, and beliefs. We are not gays! Cooperation and respect for each other will advance the cause of human rights worldwide. Confrontation, vilification, and double-standards will not.²³⁵

The former Zimbabwean President also railed against President Obama during a campaign rally, arguing that the former U.S. president wanted to force Africa to embrace homosexuality:

Then we have this American president, Obama, born of an African father, who is saying we will not give you aid if you don't embrace homosexuality ... We ask, was he born out of homosexuality? We need continuity in our race, and that comes from the woman, and not to homosexuality ... John and John, no; Maria and Maria, no ... If they don't, we will cut their heads off.²³⁶

I am of the view that Mugabe's attack on Obama captures one of the major cultural arguments against homosexuality: failure of procreation as discussed above. Obama should not be promoting homosexuality because his father was an African who values procreation. In other words, embracing homosexuality means that we are abandoning our

²³⁵ Rose Troup Buchanan, "Robert Mugabe Tells UN General Assembly: 'We are not Gays!'" *Independent*, (29.9.2015). - Max Fisher, "Mugabe Says of Obama's Gay Rights Push, 'We Ask was he Born out of Homosexuality?'" *Worldviews*, (12.7.2013).

²³⁶ *Ibid.*

cultural heritage. Also, the Zimbabwean president threatened to cut off the heads of gays. In this way, he incited violence to the gay community by suggesting that gays are not worthy to live.

Yahya Jammeh Former President of Gambia

Yahya Jammeh, the former president of Gambia, announced at a political rally that gay people had 24 hours to leave the country. He promised "stricter laws than Iran" on homosexuality and said he would "cut off the head" of any gay person found in The Gambia... The Gambia is a country of believers... sinful and immoral practices [such] as homosexuality will not be tolerated in this country.²³⁷

Yahya Jammeh's homophobic pronouncement on the banishment and beheading of gays constitutes one of the most atrocious violations of human rights. Gay people were projected as not worthy of having the right to nationality and life.

He also used his address at the United Nations General Assembly in 2013 to attack gays and lesbians, calling homosexuality one of the three biggest threats to human existence. Homosexuality, greed and obsession with world domination are deadlier than all natural disasters put together.²³⁸

Yahya Jammeh's comparison of homosexuality to natural disasters paints a bad picture that homosexuality is catastrophic to human existence. What is more appalling is the fact that African leaders use the UN General Assembly platform to make homophobic pronouncements. This demonstrates that the UN General Assembly has become a battleground where leaders can argue for or against homosexuality.

Yahya Jammeh also used a religious argument against homosexuality:

Let me make it very clear, that if they think that they can be homosexuals and want to impose homosexuality on the globe, they are doomed. They say I am intolerant, now they created a

²³⁷ "Gambia Gay Death Threat Condemned," *BBC News*, (23.5.2008).

²³⁸ www.huffingtonpost.ca/2013/09/27/yahya-jammeh-gambia-un-speech, (12.11.2015).

new minority just the same as they created chairperson ... and that homosexuals are a minority that is being oppressed in this country.

The Bible that came first condemns homosexuality and the Bible is the book of the Almighty Allah and the Quran. These are the words of the Almighty Allah telling human beings how to live and worship him, so that he will bless us and protect us.

What Allah said is haram [prohibited]; we are not going to accept it. We are not going to sacrifice the love of Allah at the altar of foreign aid. We are not a beggar nation. We will rather eat mud. We will worship the Almighty Allah and eat mud if that is going to be; because that is going to be the will of Allah than eat hamburger and chocolates and whatever and become homosexuals and offend the Almighty Allah.²³⁹

I am of the view that Yahya Jammeh capitalized on the religious argument against homosexuality in order to win more support from Gambians who are very religious. He was able to bridge the religious divide between Christians and Muslims by appealing to their sacred scriptures which proscribe homosexuality.

The Gambian president said in a speech on state television to mark the 49th anniversary of Gambia's independence from Britain:

We will fight these vermin called homosexuals or gays the same way we are fighting malaria-causing mosquitoes, if not more aggressively. As far as I am concerned, LGBT can only stand for Leprosy, Gonorrhea, Bacteria and Tuberculosis; all of which are detrimental to human existence.²⁴⁰

I am of the view that Yahya Jammeh presents homosexuality as a health epidemic which must be vigorously fought in order to save lives. His line of thought is that: just as no one can be happy to be affected by leprosy,

²³⁹ Thom Senzee, "Gambian President: U.S. Leads 'Evil Empire of Homosexuals,'" www.advocate.com, (21.12.2015).

²⁴⁰ Ludovica Laccino, "Gay Rights: Most Homophobic Comments by World Leaders," *International Business Times*, (20.3.2015).

gonorrhea, bacteria and tuberculosis; similarly, no one should practice homosexuality which is considered as a life-threatening disease.

Why is there an Increase in Homophobic Rhetoric in Africa?

But why is there an increase in homophobic rhetoric on the African continent? Homosexuality has become a scapegoat for the current socio-economic hardships facing many African countries. Therefore, politicians shift the blame to the West for everything including homosexuality.²⁴¹

Amnesty International observes that politicians in some African countries deliberately target sexual orientation issues in order to distract attention from their overall human rights records, often marked by rampant discrimination and violence against women, corruption and lack of media freedom.²⁴²

Therefore, I am of the opinion that African politicians have discovered that the phenomenon of homosexuality is a tool for diverting people's attention from pressing socio-economic problems to focus on an irrelevant issue of homosexuality as a time waster.

"Corrective Rape" in South Africa

Corrective rape is the use of rape against people who do not conform to perceived social norms regarding human sexuality and gender roles with a goal of punishing abnormal behaviour and reinforcing social societal norms.²⁴³ The term *corrective rape* was coined in South Africa after well-known cases of corrective rape of lesbians like Eudy Simelane

²⁴¹ Owen B. Sichone, "The Sacred and the Obscene: Personal Notes on Political Ritual, Poverty and Democracy in Zambia," in Jonathan Hyslop, ed., *African Democracy in the Era of Globalisation*, Johannesburg: Witwatersrand University Press, 1999.

²⁴² www.amnesty.org, (8.12.2015).

²⁴³ A Martin, A Kelly, L Turquet, S Ross, "Hate Crimes: The Rise of 'Corrective Rape' in South Africa," www.actionaid.org.uk, (12.10.2014).

and Zoliswa Nkonyana became public.²⁴⁴ All the examples of corrective rape given below demonstrate a violation of the right to life, human dignity, and the perpetration of torture, and other cruel, inhumane or degrading treatment to the victims.

Several corrective rape cases have been recorded in South Africa. Sizakele Sigasa, a lesbian activist living in Meadowlands, Soweto, and her partner Salome Masooa were gang raped, and tortured before being tied with their underwear and shot, execution-style, through the head. The South African lesbian-gay rights organizations, including the umbrella-group Joint Working Group, said the attack was driven by lesbophobia (hatred towards lesbians).²⁴⁵

Eudy Simelane, a 31-year-old soccer player in the South African national women football team, Banyana-Banyana, was killed in a homophobic attack in KwaThema, her hometown, near Johannesburg on 28 April 2008. She was abducted, gang-raped and murdered because she was a lesbian. 28 stab wounds were identified on her face, chest, legs, and cuts on the soles of her feet.²⁴⁶

Noxolo Nogwaza, 24, a lesbian activist was gang raped and killed in Kwa Thema in April 2011 in a corrective rape attack. She was a leading member of the Ekurhuleni Pride Organizing Committee (EPOC), the key LGBTI organization in KwaThema.²⁴⁷ Her gruesome and brutal murder greatly shocked the public. Her body was mutilated; her eyes were gouged out of their sockets; her brain was split open; and her teeth were scattered around her body.²⁴⁸

²⁴⁴ Lorenzo Di Silvio, "Correcting Corrective Rape: Carmichele and Developing South Africa's Affirmative Obligations to Prevent Violence against Women," *Georgetown Law Journal* 99 (2011), pp.1469–1515.

²⁴⁵ Baldwin Ndaba, "'Hate Crime' against Lesbians Slated," www.iol.co.za, (21.12.2015).

²⁴⁶ "Hate Crimes: The Rise of 'Corrective' Rape in South Africa," www.actionaid.org, (10.12.2015).

²⁴⁷ Steve Faulkner, *Statement by SAMWU's International and Equality Officer*, (3.5.2011).

²⁴⁸ "Hate Crimes: The Rise of "Corrective" Rape in South Africa," www.actionaid.org, (10.12.2015).

But why is corrective rape rampant in South Africa whose constitution outlaws discrimination based on sexual orientation and guarantees the right to same-sex marriage?

The root cause of the Corrective Rape problem can be traced to pockets of traditional African society that have not accepted homosexuality, especially among women. It is seen as un-African for two women to marry. Some men are threatened by this and then want to 'fix' it. Most of the women who have been killed in South Africa so far have been described as "butch lesbians," a slang term used to describe lesbians with a masculine or manly appearance. It seems that men are threatened by this particular kind of lesbians who threaten their manhood. Moreover, they are accusing them of stealing their girlfriends.²⁴⁹

South Africa is the only African country to have legalized homosexual marriage. The constitution specifically forbids discrimination based on sexual orientation. However, prejudice is common on the ground. It is easy to find men who support the idea of corrective rape in South Africa.²⁵⁰ This shows that it's not enough to only legalize homosexuality but also to ensure effective enforcement of the laws in order to protect the rights of all people.

Homophobic Blackmail and Extortion in Africa

Homophobic blackmail and extortion was previously discussed in connection with Malawi; however, it seems that it is a continental phenomenon. Blackmail involves threats to disclose information that a person believes to be potentially damaging to the victims' reputation or safety. Extortion involves obtaining money, property or services from another person through, for example, intimidation or threats of physical harm. Typically, extortion involves the threat of acts (if there is failure to comply with demands) that is criminal in nature – for example, threatening to vandalize a person's property or to harm their person. By

²⁴⁹ Pumza Fihlani, "South Africa's Lesbians Fear 'Corrective Rape,'" *BBC News*, (30 .6.2011).

²⁵⁰ *Ibid.*

contrast, the threat to disclose information is, for the most part, not criminal per se. For example, speculating about another person's sexual orientation publicly is likely not a crime – except when the person threatening to make such a disclosure is doing so to manipulate another person to comply with their demands.²⁵¹

Prevalence of Blackmail in Africa

A survey of men who have sex with men (MSM) in Malawi, Namibia, and Botswana found that blackmail was one of the most prevalent human rights abuses they faced, with 18% of those in Malawi, 21.3% of those in Namibia, and 26.5% of those in Botswana reporting incidents of blackmail.²⁵² Even in South Africa, where same-sex activity has been decriminalized and discrimination on the grounds of sexual orientation has been outlawed, a worrying 10.5% of MSM reported being blackmailed in peri-urban townships outside of Cape Town.²⁵³

Evidence of blackmail or extortion on the basis of real or perceived sexual orientation in Africa can be found in colonial records dating back over a century. In the 1960s and 1970s, the police in Rhodesia (Zimbabwe) actually recommended liberalizing that country's laws against homosexual acts because of the problem of blackmail – of whites by blacks – had become so widespread and politically embarrassing.²⁵⁴ The

²⁵¹ James Lindgren, "Unravelling the Paradox of Blackmail," *Columbia Law Review* 84.3 (1984). pp. 670-717; Peter Aldridge, "'Attempted Murder of the Soul': Blackmail, Privacy and Secrets," *Oxford Journal of Legal Studies* 13.3 (1993), pp. 368-387.

²⁵² S. Baral, Gift Trapence, Felistus Motimedi, Eric Umar, Scholastika lipinge, Friedel Dausab, and Chris Beyrer, "HIV Prevalence, Risks for HIV Infection, and Human Rights among Men Who Have Sex With Men (MSM) in Malawi, Namibia, and Botswana," *PLoS ONE* 4.3 (2009), p. 4.

²⁵³ S. Baral, E. Burrell, C. Beyrer, and L.G. Bekker, "Bisexual Practices and Bisexual Concurrency among Men Who Have Sex with Men (MSM) in Peri-Urban Cape Town, South Africa," presented at the IAS Conference on HIV Pathology and Treatment, (22.7.2015).

²⁵⁴ Marc Epprecht, *Hungochani: The History of a Dissident Sexuality in Southern Africa*, Montréal: McGill-Queen's University Press, 2004.

criminalization of homosexuality in roughly thirty-eight African countries provide the basis for a surge in acts of extortion and blackmail against people on the basis of their sexual orientation.²⁵⁵

Forms of Blackmail and Extortion

Various forms of blackmail and extortion are perpetrated in Africa. For instance, Miss Bola was blackmailed by a co-worker for money, blackmailed by her boss for sex and ritual favours, and was finally exposed, fired, and forced to flee to a different city.²⁵⁶ Paa and K.K. were repeatedly raped at knifepoint or gunpoint with the knowledge that the police would not help them because they were gay.²⁵⁷ Joe, Farai, and Tendai, faced arrest when the police become complicit in blackmail and put their relationships under traumatic scrutiny.²⁵⁸

The Impact of Blackmail and Extortion

Blackmail and extortion have a wide variety of harmful effects on their victims and the society at large. For the individual victims, blackmail and extortion are psychologically, financially, and often physically traumatizing. They often feel they have nobody to turn to, and are intimidated and disempowered at the same time that they are stripped of their money or possessions. The strain that blackmail and extortion put on individuals as well as their relationships with others exacerbates the

²⁵⁵ Charles Gueboguo and Marc Epprecht, "Extortion and Blackmail on the Basis of Sexual Orientation in Africa: A Case Study from Cameroon," in: Ryan Thoreosn and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, (2007), p. 89.

²⁵⁶ Unoma Azuah, "Extortion and Blackmail of Nigerian Lesbians and Bisexual Women," in Ryan Thoreosn and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, (2007), p. 46.

²⁵⁷ Mac-Darling Cobbinah, "'Because of You': Blackmail and Extortion of Gay and Bisexual Men in Ghana," in Ryan Thoreosn and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, (2007), p.60.

²⁵⁸ Oliver Phillips, "Blackmail in Zimbabwe: Troubling Narratives of Sexuality and Human Rights," in Ryan Thoreosn and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, (2007), p. 19.

financial and material loss that these offences so frequently involve.²⁵⁹ Blackmail also deprives those involved of the ability to freely and honestly narrate their own relationships. When blackmail occurs, LGBTI people are forced to narrate their relationships in such a way that they will not incriminate themselves before police, the judiciary, or the wider society.²⁶⁰

Blackmail and extortion against LGBTI people also affects the wider community because victims are often driven into increasingly desperate and untenable situations, forcing them to bribe, steal, or silence those who might disclose their secret. Whether they live in a constant state of fear and insecurity, neglect their other commitments and relationships to appease their blackmailer or extortionist, or are forced to flee the situation to safety, blackmail and extortion make it virtually impossible for victims to fully and meaningfully contribute to society.²⁶¹

The secrecy and desperation involved in both offences, and the fact that they are often committed with impunity, encourages criminality and creates perverse incentives. Perpetrators are effectively being rewarded for a range of crimes that trap and manipulate their victims, including spying, entrapment, false accusations, theft, criminal coercion, withholding information from the police, and physical violence. Furthermore, blackmailers who target LGBT people, often attempt to privately enforce legal and social mores, thus are usurping the state's power. These various factors ultimately weaken the justice system and result in a disregard for, and subversion of, the rule of law, and all of them provide a rationale for the criminalization of blackmail and extortion.²⁶²

²⁵⁹ Ryan Thoreson and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, (2007), p. 8.

²⁶⁰ Oliver Phillips, "Blackmail in Zimbabwe: Troubling Narratives of Sexuality and Human Rights," in: *The International Journal of Human Rights* 13.2 (2009), pp. 345-364.

²⁶¹ Ryan Thoreson and Sam Cook (eds.), *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, IGLHRC, (2007), p. 8.

²⁶² *Ibid.*

I am of the opinion that blackmailers and extortionists use the need for secrecy and the lack of legal system support to manipulate their victims by demanding money, forcing them into sex, keeping them in a particular place or relationship, forcing them to cut off ties with partners, friends, or families, or to perform services, including those which are unpleasant, dangerous, or even criminal.

The Notion that Homosexuality is African

Although the phenomenon that homosexuality is un-African is widely accepted on the African continent, evidence exist that points to the prevalence of homosexuality in Africa even before the colonial period.

The Prevalence of Homosexuality in Pre-Colonial Africa

There is some historical evidence that supports the widespread existence of same-sex patterns and roles throughout the African continent.²⁶³ Evidence exists showing that homosexuality occurred in Africa even before colonization and the advent of both Christian and Muslim missionaries.

There are some striking similarities between the ancient Greece pederasty and the Zande male warriors of Sudan who preferred marrying young boys and not women.²⁶⁴ In Benin, same-sex practices amongst boys are still considered a rite of passage. Amongst the Fon, for example, boys are allowed to enjoy close sexual friendships among each other to ease the sex drive.²⁶⁵ The presence of homosexual practices can be traced back thousands of years. The rock art of the San people, considered the oldest inhabitants of Zimbabwe, explicitly depict same-sex acts amongst men.²⁶⁶

²⁶³ Stephen O. Murray and Will Roscoe (eds.), *Boy-Wives and Female Husbands: Studies in African Homosexualities*, New York: St. Martin's Press, 1998.

²⁶⁴ Edward Evans-Pritchard, *Azande*, Oxford: Clarendon Press, 1971.

²⁶⁵ Thabo Msibi, "The Lies We Have Been Told: On (Homo) Sexuality in Africa," *Africa Today* 58(1): (2011), p. 66.

²⁶⁶ Marc Epprecht, "The Unsayings of Indigenous Homosexualities in Zimbabwe: Mapping a Blindspot," *Journal of Southern African Studies* 24 (4): (1998), pp. 631-651.

"Uranism" existed in Ethiopia in 1909 among the Semitic Harari people and sodomy is not foreign to the Harari. It also occurs among the Galla [Oromo] and Somali.²⁶⁷ A Jesuit missionary working in Southern Africa in 1606 described the "Chibadi," who are men attired like women and they behave themselves womanly and are ashamed to be called men.²⁶⁸

Kabaka (king) Mwanga II of Buganda, who ruled in the latter half of the 19th century, was widely reported to have engaged in sexual relations with his male subjects.²⁶⁹ He killed twenty-two martyrs between 1885 and 1887 for refusing him gay sex in his palace after they had converted to Christianity.²⁷⁰

Court records provide the only substantial documentary evidence for homosexual behaviour among blacks in Zimbabwe. There were over 400 court cases of homosexuality between 1892 and 1932 alone.²⁷¹ This evidence contradicts President Robert Mugabe's assertion that homosexuality is a western phenomenon.²⁷²

African Terms for Homosexuality

The vocabulary used to describe same-sex relations in traditional languages, predating colonialism, is further proof of the existence of such relations in pre-colonial Africa.²⁷³ To name but a few, the Shangaan of southern Africa referred to same-sex relations as "*inkotshane*" (male-wife); Basotho women in present-day Lesotho engage in socially

²⁶⁷ Stephen Murray, "Homosexuality in 'Traditional' Sub-Saharan Africa and Contemporary South Africa: An Overview." *Boy-Wives and Female Husbands. Studies on African Homosexualities* (1998): 1-18.

²⁶⁸ Thabo Msibi, "The Lies We Have Been Told: On (Homo) Sexuality in Africa," *Africa Today* 58(1): (2011) p. 66.

²⁶⁹ Lizbeth Paulat, The Myth of African Homosexuality, www.care2.com/causes/the-myth-of-african-homosexuality, (16.12.2015).

²⁷⁰ www.ugandamartyrsshine.org, (16.12.2015).

²⁷¹ Marc Epprecht, "The Unsayings of Indigenous Homosexualities in Zimbabwe: Mapping a Blindspot" *Journal of Southern African Studies* 24 (4): (1998), pp. 631-651.

²⁷² Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance*, Vol 3, No. 3.3 Quarter III, 2012.

²⁷³ Sylvia Tamale, "Homosexuality is not un-African," *Aljazeera*, (26.4.2014).

sanctioned erotic relationships called "*motsoalle*" (special friend) and in the Wolof language, spoken in Senegal, homosexual men are known as "*gor-digen*" (men-women).²⁷⁴

In Zimbabwe, words that made homosexual behaviour explicit were only adopted in the late nineteenth century from other languages. *Ngotshana* (or *ngochani* in contemporary usage), for example, appears to derive from Zulu or Shangaan, while *mathanyula* came from the Chewa spoken by Malawian migrants.²⁷⁵

The Hausa people have terms in their language that are used to describe homosexuals. Two terms are common, '*yan dauda*,' which is usually translated as "homosexual" or "transvestite" and '*dan dauda*,' which translates as a homosexual "wife." The '*yan dauda*' are often engaged in the sex trade: both as male prostitutes and as 'procurers' for female prostitutes. In the latter role, they do not behave as 'pimps' do in the west, maintaining 'stables' of female prostitutes under their subjugation, but rather simply as go-betweens, arranging, for a fee, liaisons for men seeking the commercial charms of female prostitutes. In this role, they often engage as male prostitutes themselves when the opportunity arises.²⁷⁶

In Burundi, two Kirundi words are used for sodomy: '*umuswezi*' and '*umukonotsi*.' Also, at least five Rundi words are used for male-male sexuality: *kuswerana*, '*nk'imbwa*,' '*kunonoka*,' '*kwitomba*,' '*kuranana inyuma*,' and '*ku'nyo*.'²⁷⁷

²⁷⁴ Ibid.

²⁷⁵ Marc Epprecht, "The Unsayings of Indigenous Homosexualities in Zimbabwe: Mapping a Blindspot," *Journal of Southern African Studies* 24 (4):631-651, (1988).

²⁷⁶ www.bidstrup.com/phobiahistory.htm, (8.7.2015).

²⁷⁷ Stephen O. Murray, "Homosexuality in Traditional Sub-Saharan Africa and Contemporary South Africa," (7.7.2015).

The Khoi-Khoi of South Africa used the word '*koetsire*' to describe men considered sexually receptive to other men, and '*soregus*' was the word they used for a friendship which involved same-sex masturbation.²⁷⁸

Therefore, I am of the opinion that the plethora of evidence presented in this section points to the fact that homosexuality has existed in Africa even before the days of colonialism. Hence, the rhetoric among African leaders claiming that homosexuality is not only aberrant, but un-African is ahistorical. The premise of the claim, however, is neither as simple nor as concrete as it is commonly presented. For the most part, it disassociates homosexuality from specificity and context. The given cultural and historical context in which the current knowledge of homosexuality in Africa was established, however, remains deceptively absent from most narratives condemning homosexuality as un-African.

Having presented the evidence for homosexuality in pre-colonial Africa, I will now present a discussion on LGBTI rights in Africa.

Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBT) Rights in Africa

This section discusses the progress of LGBTI rights in Africa. South Africa is the only African country which gives full recognition of sexual minority rights in Africa.²⁷⁹ Homosexuality is outlawed in 34 African countries.²⁸⁰ Benin and the Central African Republic do not outlaw homosexuality, but have certain laws which apply differently to heterosexual and homosexual individuals.²⁸¹

²⁷⁸ Bernadino Evaristo, "The Idea that African Homosexuality was a Colonial Import is a Myth," www.theguardian.com, (7.7.2015).

²⁷⁹ "Gay Rights Win in South Africa," *BBC News*, (9.10.1998).

²⁸⁰ Aengus Carroll and Lucas Paoli Itaborahy, *State Sponsored Homophobia 2015: A World Survey of Laws: Criminalization, Protection and Recognition of Same-sex Love*, Geneva; ILGA, May 2015.

²⁸¹ Louise Ferreira, "How many African States Outlaw same-Sex Relations? (At least 34)," www.africancheck.org, (28.2015).

African Charter on Human and Peoples' Rights (ACHPR) and LGBTI Rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.²⁸²

The African Charter was finally adopted by the OAU Assembly on 28 June 1981, in Nairobi, Kenya. After ratifications by the absolute majority of member states of the OAU, the Charter came into force on 21 October 1986. By 1999, the African Charter had been ratified by all the member states of the OAU.²⁸³

Article 2 of the African Charter states that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.²⁸⁴ In other words, this article postulates the right to non-discrimination based on the listed grounds.²⁸⁵

The African Charter is the first and so far the only regional human rights instrument to embody peoples' rights and individual and states duties.²⁸⁶ The Charter also embodies civil and political rights, economic, social and cultural rights, and the right to development. The recognition in the Charter of the three generations of rights gives full effect to the indivisibility and interdependence of human rights.²⁸⁷

²⁸² www.achpr.org/instruments/achpr, (7.12.2015).

²⁸³ Ibid.

²⁸⁴ Article 2 of the African Charter, www.achpr.org/instruments/achpr, (7.12.2015).

²⁸⁵ It is reiterated in the following articles of the African Charter: 3, 13, 18, 19 and 27.

²⁸⁶ F. Viljoen, "Review of the African Commission on Human and Peoples' Rights" in C Heyns(ed.), *Human Rights Law in Africa* (1997), p. 47

²⁸⁷ In the 1993 Vienna Declaration and Programme of Action (A/CONF 157/23, 12 July 1993) the universality and indivisibility of human rights are reaffirmed. Art 5 of Part I of the Declaration provides that all human rights are universal, indivisible, interdependent and interrelated.

The primary duty created by the African Charter is the obligation placed on the member states to recognize and give effect to the rights in the Charter, and this broad obligation is considered to have four components, namely, to respect, to protect, to promote and to fulfil the rights recognized.²⁸⁸

The African Charter does not explicitly make reference to the duty of member states to recognize and give effect to LGBT rights and like most other international human rights treaties it is in fact silent on the issue of sexual orientation.²⁸⁹

The terms used in Article 2 of the African Charter are not exhaustive. Other possible grounds of discrimination, for example age, disability and sexual orientation are covered though not stated.²⁹⁰ This explains why most African States which subscribes to the African Charter continue to discriminate LGBTI rights because they are vaguely expressed in this human rights foundational document.²⁹¹ The African Charter is an ineffective human rights instrument for keeping signatory states accountable for the violation of sexual minority rights.²⁹²

Proponents of LGBTI rights have argued that Article 2 of the African Charter prohibits discrimination of any kind and the listed grounds only serve merely as examples of the kinds of discriminations that are envisaged. The open-ended nature of the list is reinforced by the words: 'other status,' at the end of the article.²⁹³ There is no limit to the number

²⁸⁸ F. Viljoen, "Review of the African Commission on Human and Peoples' Rights" in C Heyns (ed.), *Human Rights Law in Africa* (1997), p. 47.

²⁸⁹ Luis Edgar Francisco Huamusse, "The Rights of Sexual Minorities under the African Human Rights Systems," LLM, University of Western Cape, 2006.

²⁹⁰ Article 2 of the African Charter, www.achpr.org/instruments/achpr, (7.12.2015).

²⁹¹ African countries like Zimbabwe, Malawi, Uganda, Nigeria, etc. have taken advantage of the weaknesses of the language of the African Charter to criminalize homosexuality.

²⁹² Ian Davidson, African Human Rights Charter must Include Gays, www.mamba.online.com, (12.9.2014).

²⁹³ C Heyns, "Civil and Political Rights in the African Charter" in M. Evans and R. Murray, *The African Charter on Human and People's Rights' The System in Practice, 1986-2000*, (2002), p 143.

of categories that might be added to the existing list. This means that 'sexual orientation' may be included as a ground on which 'distinction' could not be tolerated.²⁹⁴

The fact that sexual orientation is not explicitly expressed in the African Charter as a ground for non-discrimination has led some African states to pass laws which denounce LGBTI rights. For instance, Nigeria and Uganda grabbed international headlines for passing anti-homosexual laws.²⁹⁵

Therefore, I argue that the ACHPR is exclusionary to LGBTI people and continues to undermine the full realization of a universal protection of human rights. It is only until the African Union has amended article 2 of the ACHPR to include sexual orientation as a basis of discrimination that all AU member states will be able to fully recognize and protect LGBTI rights.

African Commission on Human and Peoples' Rights (ACHPR) and Sexual Minority Rights

The African Charter established the African Commission on Human and Peoples' Rights. The Commission was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. The Commission's Secretariat has subsequently been located in Banjul, The Gambia.²⁹⁶

The African Commission is entrusted with three main functions: (1) the protection of human and people's rights, (2) the promotion of human

²⁹⁴ R. Murray and F. Viljoen, "Lobbing on Sexual Orientation Issue: The possibilities before the African Commission on Human and Peoples' Rights and Africa Union," HRQ4 (2007).

²⁹⁵ Nigeria's House of Representatives voted on 30 May 2014 to ban gay marriage and outlaw any groups actively supporting gay rights, endorsing a measure that also calls for 10-year prison sentences for any "public show" of affection by a same-sex couple. Ugandan parliament passed the Anti-Homosexuality Act 2014 on 20 December 2013. The Act prohibits any form of sexual relations between persons of the same sex and prohibits the promotion or recognition of such relations.

²⁹⁶ www.achpr.org, (20.11.2015).

and people's rights, and (3) the interpretation of the African Charter on Human and People's Rights.²⁹⁷

The African Commission noted that there was an escalation of acts of violence, discrimination and other human rights violations on sexual minorities in many parts of Africa. Such violence included corrective rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail.²⁹⁸

Consequently, the 55th Ordinary Session of the African Commission on Human and Peoples' Rights adopted a resolution calling for the member states of the African Union to respect the rights of LGBTI people. The 'Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity,' was adopted during the commission's session in Luanda, Angola. It reminds member states that, 'Article 2 of the African Charter on Human and Peoples' Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.'²⁹⁹

Furthermore, the commission expressed its concern on the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organizations working on issues of sexual orientation or gender identity in Africa. Also, it deplored the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity.³⁰⁰

²⁹⁷ Ibid.

²⁹⁸ www.gaystarnews.com/article/african-commission-human-and-peoples-rights-speaks-out-against-treatment-lgbtis-africa, (20.11.2015).

²⁹⁹ Ibid.

³⁰⁰ Ibid.

I am of the view that the significance of the 55th Session of the African Commission is that, despite lack of a formal law associated with the new view coming into play in the AU, the resolution has been formally acknowledged. Moreover, it is a catalyst in the sexual minority discourse by the AU and serves as a direct rebuttal to fellow African nations like Nigeria and Uganda, which have recently passed laws denouncing LGBTI rights in Africa.

Conclusion

This chapter has demonstrated that the homosexual debate in Africa has produced two camps: either for or against the phenomenon of homosexuality. On one hand, arguments against homosexuality in Africa are premised on three grounds: (1) heterosexual normativity, which is contrary to same-sex relationships, (2) it does not lead to procreation, and (3) Ubuntu. Moreover, many Africans deny the indigenous roots of homosexuality and consider it as a western imported phenomenon. Thus, homosexuality has not found a fertile ground on the African soil; consequently, homophobia prevails. However, there are indications that homosexuality is prevalent in Africa and some pro-homosexual instruments in terms of charters have been put in place to safeguard the rights of LGBTI people.

Chapter 5: International Debate on Human Rights and Homosexuality

In chapter 2, it was observed that some non-governmental organizations used human rights arguments to protect LGBTI people in Malawi. It also showed that some nations attach sexual minority rights issues to their aid to the Malawi Government. Therefore, this chapter deals with how the international community deals with the issues of human rights in relation to homosexuality.

Human Rights and Homosexuality

This study recognizes that the human rights discourse forms a central part of the international lesbian, gay, bisexual, transgender, and inter-sex (LGBTI) lobby. The basic assumption underlying the human rights agenda is that all human beings are born free and equal in dignity and rights.⁷¹⁷ Hence, LGBTI individuals and those fighting for the promotion of gay rights argue that they are also entitled to these rights like all other people.

Definition of Human Rights

Human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in international law.⁷¹⁸ They are commonly understood as inalienable⁷¹⁹ fundamental rights to which a person is inherently entitled simply because she or he is a human being.⁷²⁰ Human rights are inherent in all

⁷¹⁷ The Yogyakarta Principles: Principles on the Application of International human Rights Law in relation to sexual Orientation and Gender Identity, 6 March 2007, www.yogyakartaprinciples.org, (1 .3.2016).

⁷¹⁸ James Nickel, "Human Rights," *Stanford Encyclopedia of Philosophy*, (7.12.2015).

⁷¹⁹ The United Nations, Office of the High Commissioner of Human Rights, What are Human Rights? www.ohcr.org, (7.12.2015).

⁷²⁰ Magdalena Sepúlveda, Theo van Banning, *Human Rights Reference Handbook*, Ciudad Colon, Costa Rica: University of Peace, 2004.

human beings regardless of their nation, location, language, religion, ethnic origin or any other status.⁷²¹

The concept of human rights which is widely acknowledged in international law and relations does not have a precise definition. For instance, Article 1(3) of the UN Charter includes, as part of the purposes of the organization, the promotion and encouragement of a respect for human rights and fundamental freedoms for all, but without defining them. Similarly, the Universal Declaration of Human Rights does not give any specific definition of human rights. It simply declares that: 'the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.'⁷²²

The idea of human rights is related to the concept of justice, the good and democracy. It is a political idea with a moral foundation which defines the relationship that should exist between the individual and society.⁷²³ Human rights are those claims made by men for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, as a human being and a member of humankind. In essence human rights combine ethical and political doctrines with rationalistic and theological roots.⁷²⁴

Human rights should be viewed not only as the absolute yardstick, which they are, but also as a synthesis from a long historical process. As an absolute yardstick, human rights constitute the common language of humanity. Adopting this language allows all peoples to understand others and to be the authors of their own history.⁷²⁵

⁷²¹ Burns H. Weston, *Human Rights*, www.britanica.com, (7.12.2015).

⁷²² Jean Desire Ingange-wa-Ingange, "The African Human Rights System: Challenges and Prospects," PhD, UNISA, 2010.

⁷²³ L. Henkin, *International Law*, St. Paul, MN: West Publishing, 1989.

⁷²⁴ F.E. Dowrick, *Human Rights, Problems, Perspectives and Texts*, Surrey, UK: Ashgate Publishing Company, 1979.

⁷²⁵ Boutros-Boutros Ghali, *An Agenda for Peace: Preventive Diplomacy, Peace-Making and Peace-Keeping*, New York: United Nations, 1993.

Historical Development of the Concept of Human Rights

The modern-day conception of human rights developed in the aftermath of the Second World War and the atrocities of the Holocaust.⁷²⁶ These two events culminated in the adoption of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly on 10 December 1948 at the Parais de Chaillot, Paris.⁷²⁷ Forty-eight of the members were in favour, there was no opposition, and only eight abstentions – the Soviet Union and its allies (due to its widely different concept of human rights and how this then related to the state), South Africa (due to the apartheid system), and Saudi Arabia (which viewed the declaration as too Western-orientated).⁷²⁸

Historically, the human rights idea has not been an inclusive one. The history of human rights can be read as a history of tensions between movements for the expansion of human rights protection. On one hand, it included marginalized populations' i.e. Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) people; while on the other hand some have resisted their inclusion. Movements for more inclusiveness in rights entitlements have been confronted with counter-movements that seek to restrict the scope of human rights and their universal applicability.⁷²⁹

The United Nations Human Rights Committee (HRC)

The United Nations Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee on how

⁷²⁶ Clemens N. Nathan, *The Changing Face of Religion and Human Rights, a Personal Reflection*, Boston: Martinus Nijhoff, 2009.

⁷²⁷ Michael Freeman, *Human Rights: an Interdisciplinary Approach*, Cambridge: Polity Press, 2002.

⁷²⁸ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia: University of Pennsylvania Press, 1999.

⁷²⁹ Bonny Ibhawoh, "Human Rights for Some: Universal Human Rights, Sexual Minorities, and the Exclusionary Impulse," *International Journal*, Vol. 69 (4) (2014), pp. 612-622.

the rights are being implemented.⁷³⁰ Furthermore, citizens of countries that have ratified the treaty can submit complaints to the Committee requesting a determination whether provisions of the Covenant have been violated. In other words, the Human Rights Committee functions as a mechanism for the international redress of human rights abuses.⁷³¹

Sexual Minorities and International Human Rights Instruments that Support Homosexuality

Sexual minorities refer to people who, under contemporary regimes, are singled out from the rest of society for discriminatory treatment on the basis of the "sex of the people toward whom one is sexually attracted."⁷³²

Sexual minority groups encompasses all individuals who have traditionally been distinguished by societies because of their sexual orientation, inclination, behaviour or gender identity' and does not include 'individuals whose sexual identity is based upon non-consensual sexual behaviour.'⁷³³

Sexual minorities are people who are sometimes despised and targeted by 'mainstream' society because of their sexuality. They are victims of systematic denials of rights because of their sexuality (and, in most cases, for transgressing gender roles). Like victims of racism, sexual minorities are human beings who have been identified by a dominant social group as somehow less than fully human, and thus not entitled to the same rights as 'normal' people.⁷³⁴

⁷³⁰ www.ohchr.org (19.4.2016).

⁷³¹ R.K.M. Smith, *Textbook on International Human Rights*, Oxford University Press, 2010.

⁷³² D. Hunter, S. Michelson, "The Rights of Lesbians and Gay Men: The Basic ACLU Guide to a Gay Person's Rights," 1992.

⁷³³ James D. Wilets, 'Final HRC Report on Sexual Minorities' www.ohchr.org/, (27.10.2015).

⁷³⁴ J. Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2003.

Discrimination against sexual minorities is based on more than simply the existence of same gender sexual relations. Rather it is based on intolerance by the majority of the populace to any group of people (minority) that challenges traditionally defined gender roles.⁷³⁵

Discrimination against sexual minorities is conceived where this group is viewed as deviating from the dominant '*normative heterosexual paradigm*'. This concept is based on the idea that the structure of society is related to the structure of a 'normal' family, which is defined as a unit comprising of a man, a woman and children along heterosexual lines, ignoring other sexual attractions and preferences.⁷³⁶

The protection of sexual minorities should be considered in the light of the international human rights instruments which are binding on all member states of the UN.⁷³⁷

The Universal Declaration of Human Rights (UDHR) and Sexual Minority Rights

The UDHR reflects a determination to protect human rights and it assumes the existence of a common moral standard for judging nations and governments on human rights issues. Its fundamental message lies in the following statement:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁷³⁸

Articles 1 and 2 are the foundational blocks, with their principles of dignity, liberty, equality, and brotherhood. The main body of the Decla-

⁷³⁵ James D. Wilets, 'Final HRC Report on Sexual Minorities' www.ohchr.org/, (27.10.2015).

⁷³⁶ E. Heinz, *Sexual Orientation: A Human Right. An Essay on International Human Rights Law*, Norwell, MA: Kluwer Academic Publishers, 1995.

⁷³⁷ Luis Edgar Francisco Huamuse, "The Rights of Sexual Minorities under the African Human Rights Systems," LLM, Cape Town: University of Western Cape, 2006.

⁷³⁸ Universal Declaration, preamble, paragraph 1.

ration forms the four columns. The first column (articles 3–11) constitutes rights of the individual such as the right to life and the prohibition of slavery. Articles 6 through 11 refer to the fundamental legality of human rights with specific remedies cited for their defense when violated.⁷³⁹

The second column (articles 12–17) constitutes the rights of the individual in civil and political society (including such things as freedom of movement). The third column (articles 18–21) is concerned with spiritual, public, and political freedoms such as freedom of association, thought, conscience, and religion. The fourth column (articles 22–27) sets out social, economic, and cultural rights. The last three articles of the Declaration provide the pediment which binds the structure together. These articles are concerned with the duty of the individual to society and the prohibition of the use of rights in contravention of the purposes of the United Nations Organization.⁷⁴⁰

The Universal Declaration of Human Rights poses a problem in achieving an integrated understanding of the conceptual and practical connections of human rights due to its scope and abstraction.⁷⁴¹ The universal standards of human rights which are believed to be applicable and justifiable independent of particular cultures, religious traditions, and social contexts, are constantly questioned. This problem can be traced to the irreconcilable disagreements that arise from the conflict of interests, socio-cultural, and ideological differences.⁷⁴² For instance, some scholars are skeptical about the existence of a common natural morality that transcends cultural and religious diversity. Beliefs in universal

⁷³⁹ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House, 2002.

⁷⁴⁰ Ibid.

⁷⁴¹ A. Hennelly and J. Langan (eds.), *Human Rights in Americas: The Struggle for Consensus*, Washington D.C.: Georgetown University Press, 1982.

⁷⁴² Jean Desire Ingange-wa-Ingange, "The African Human Rights System: Challenges and Prospects," PhD, UNISA, 2010.

human rights ignore the fact that there is no actual universal morality, but rather a fragmented world of moralities.⁷⁴³

The UDHR, which is the foremost international human rights instrument, does not mention sexual orientation as a basis of discrimination.⁷⁴⁴ Therefore, I argue that the UDHR is exclusionary to LGBTI people and continues to undermine the full realization of a universal protection of human rights. It is only until the international community amends article 2 of the UDHR to include sexual orientation as a basis of discrimination that UN member states will be able to fully recognize and protect LGBTI rights.

But, some scholars have argued that the UDHR implicitly protects LGBTI rights. For instance, Article 1 of the Universal Declaration of Human Rights (UDHR) states that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."⁷⁴⁵ Also, in 2008, Article 1 of UDHR was reaffirmed to include sexual orientation by many members of the United Nations.⁷⁴⁶ However, this is not enough since it undermines the necessity of incorporating sexual orientation as a basis of discrimination. In other words, the UDHR should explicitly state that sexual orientation is one of the grounds for discrimination.

The European Convention on Human Rights (ECHR) on Homosexuality

The European Convention on Human Rights (ECHR) (formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*) is an international treaty to protect human rights and fundamental freedoms in Europe. It was drafted in 1950 by the then newly

⁷⁴³ S. Hauerwas, *The Peaceable Kingdom: Primer in Christian Ethics*, Indiana: University of Notre Dame, 1983.

⁷⁴⁴ UDHR Article 2, www.un.org/en/universal-declaration-human-rights/index.html.

⁷⁴⁵ UDHR Article 1, www.un.org/en/universal-declaration-human-rights/index.html.

⁷⁴⁶ UN General Assembly, Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations, UN Doc. A/63/635, 22 December 2008, (7.12.2015).

formed Council of Europe. The convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.⁷⁴⁷

The ECHR is the only single major human rights instrument which grants explicit rights to non-discrimination based on sexual orientation or sexual minority status.⁷⁴⁸ However, the European Charter applies only to the limited membership of the EU and is not legally binding even there. At best, it may be used as an interpretive resource for other EU sources of law. Nonetheless, together, the norms of free intimate association, privacy, family life, and non-discrimination might be thought to suggest that states bear a heavy burden to justify singling out a specific class of persons and regulating their private sexual behaviour, or basing legal and political restrictions or advantages on specific sexual or gender characteristics. Today, a minority of states continue to criminalize homosexual intercourse and, while state-sponsored or tolerated discriminatory treatment against sexual minorities remains rampant, it has become much rarer and often less virulent in form. Doors formerly closed to sexual minorities, such as state recognized relationships carrying some of the benefits of marriage, have cracked open.⁷⁴⁹

Privacy under the European Convention on Human Rights

Article 8 of the European Convention says that:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

⁷⁴⁷ Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects*, Cambridge University Press, 2006.

⁷⁴⁸ European Charter, *Supra* Note 1, art. 21, www.ec.europa.eu/justice/fundamental-rights/charter/index_en.htm, (27.10.2015).

⁷⁴⁹ Aaron Xavier Fellmeth, "State Regulation of Sexuality in International Human Law and Theory," 50 *William and Mary Law Review*, 797 (2008).

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country. This is for the prevention of disorder or crime, for the protection of health or morals, and for the protection of the rights and freedoms of others.⁷⁵⁰ This article is considered to be one of the Convention's most open-ended provisions.⁷⁵¹

The provision of privacy was interpreted in the court case of *Dudgeon v United Kingdom*⁷⁵² where Mr. Jeffery Dudgeon complained of the existence in Northern Ireland of a law that criminalized consensual homosexual conduct that had the effect of making certain homosexual acts between consenting adult males a criminal offence. The European Court on Human Rights noted that the existence of this legislation constituted an infringement of Mr. Dudgeon's right to privacy (which includes his sexual life) within the meaning of Article 8 (1) of the European Convention.⁷⁵³

The court in its *ratio decidendi* observed that the case concerned a most intimate aspect of private life and accordingly there must exist particularly serious reasons before interferences by public authorities can be legitimate and lawful. The United Kingdom government argued that it was necessary to have legislation protecting the moral ethos of the society as a whole so as to, inter alia, preserve public order and decency and to protect the citizens from that which is offensive and injurious. If this argument had prevailed it would have had the effect of bringing homosexual behaviour between consenting adults in private within the

⁷⁵⁰ Article 8 of ECHR, www.ec.europa.eu/justice/fundamental-rights/charter/index_en.htm, (27.10.2015).

⁷⁵¹ Bernadette Rainey et.al, *The European Convention on Human Rights*, Oxford: Oxford University Press, 2014.

⁷⁵² *Dudgeon v UK* (No. 7525/76) (1978) 11 D.R.117, www.hrcr.org/safrica/dignity/-Dudgeon%20UK.htm (27.10.2015).

⁷⁵³ Luis Edgar Francisco Huamusse, "The Rights of Sexual Minorities under the African Human Rights Systems," LLM, Cape Town: University of Western Cape, 2006.

realm of private morality and immorality. The very existence of this legislation continuously and directly affected Mr. Dudgeon's private life.⁷⁵⁴

In the assessment of whether the interference was morally reasonable, it is argued that the Court took the view that the requirements of morals varies from time to time and from place to place, especially in our era. By reason of their direct and continuous contact with the vital forces of their countries, state authorities are, in principle, in a better position than the international judge, to give an opinion on the exact content of those requirements.⁷⁵⁵

Nevertheless, it was held that the law could not be justified under article 8(2) of the European Convention on Human Rights as necessary in democratic society for the protection of 'morals' or 'the right and freedoms of others.' To this end, the Court concluded that the 'sodomy law in Northern Ireland' violated the right to privacy in article 8 of the European Convention on Human Rights.⁷⁵⁶

Article 12 of the European Convention on Human Rights

Article 12 of the European Convention on Human Rights provides a right for men and women of marriageable age to marry and establish a family. Since 1986, the European Court of Human Rights (ECHR) has repeatedly asserted an interpretation of Article 12 that has excluded same-sex couples from the enjoyment of the right to marry.⁷⁵⁷ In the case of *Rees v the United Kingdom*, the ECHR stated that the right to marry guaranteed by Article 12 refers to the traditional marriage between persons of opposite biological sex. This appears also from the

⁷⁵⁴ Dudgeon v UK Para 41, www.hrcr.org/safrica/dignity/Dudgeon%20_UK.htm (27.10.2015).

⁷⁵⁵ Dudgeon v UK, Para 52, www.hrcr.org/safrica/dignity/Dudgeon%20_UK.htm (27.10.2015).

⁷⁵⁶ Ibid, Para 63.

⁷⁵⁷ Article 12 of ECHR, www.echr.coe.int/Documents/Convention, (7.12.2015).

wording of the Article which makes it clear that Article 12 is mainly concerned to protect marriage as the basis of the family.⁷⁵⁸

The ECHR's interpretation of Article 12 has gone on to determine that founding a family is not a condition of the right to marry and that the inability of any couple to conceive or parent a child cannot be regarded as per se removing their enjoyment of the right to marry. Moreover, the ECHR has held that the reference to 'men and women' in Article 12 can no longer be taken to refer to a determination of gender by purely biological criteria. However, when the ECHR evolved its interpretation of Article 12 in this way in the court case of *Christine v the United Kingdom*, in order to recognize the right of a post-operative transsexual to marry an opposite-sex partner – it was careful to reiterate that Article 12 'refers in express terms to the right of a man and woman to marry.' The European Court of Justice ruled in the court case of *Schalk and Kopf v Austria* that countries are not required to provide marriage licenses for same-sex couples. However, if a country allows same-sex couple marriage it must be done under the same conditions that opposite-sex couple's marriage face: in order to prevent a breach of article 14 - the prohibition of discrimination.⁷⁵⁹

The European Court of Human Rights (ECHR) in the court case of *Oliari and others v. Italy* analyzed the status of same-sex couples wishing to marry or enter into a legally recognized partnership. The court ruled that the absence of a legal framework recognizing homosexual relationships violates the right to respect for privacy and family life, as provided by the European Convention of Human Rights (ECHR) in article 8.⁷⁶⁰

⁷⁵⁸ P. Johnson, "'The Choice of Wording must be Regarded as Deliberate': Same-sex Marriage and Article 12 of the European Convention on Human Rights", *EL Rev*, 2: (2015) pp. 207-224.

⁷⁵⁹ *Schalk and Kopf v Austria*, hudoc.echr.coe.int/.../pdf/001-99605. (Application no. 30141/04) is a case decided in 2010 by the European Court of Human Rights (ECtHR) in which it was clarified that the European Convention on Human Rights (ECHR) does not oblige member states to legislate for or legally recognize same-sex marriages, (27.10.2015).

⁷⁶⁰ www.scribd.com/doc/272169519/Case-of-Oliari-and-Others-v-Italy, (27.10.2015).

The International Covenant on Civil and Political Rights (ICCPR) and Sexual Minorities

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came into force on 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.⁷⁶¹

All states that are parties to ICCPR are bound to fulfill all its obligations under the terms of the Covenant.⁷⁶² For instance, Articles 2 – 5 of ICCPR oblige parties to legislate, where necessary, to give effect to the rights recognized in the Covenant, and to provide an effective legal redress for any violation of those rights.⁷⁶³ It also requires the rights to be recognized "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,"⁷⁶⁴ and to ensure that they are enjoyed equally by women.⁷⁶⁵

Nations that have ratified ICCPR must ensure the protection of freedom from incursion into privacy.⁷⁶⁶ Article 17 mandates the right of privacy.⁷⁶⁷ This provision, specifically article 17(1), protects private adult consensual sexual activity, thereby nullifying prohibitions on homosexual behaviour.⁷⁶⁸ However, the wording of this covenant's

⁷⁶¹ "UN Treaty Collection: International Covenant on Civil and Political Rights," www.treaties.un.org, (27.7.2015).

⁷⁶² Malawi ratified ICCPR on 22.12.1993; As of April 2014 the Covenant has 74 signatories and 168 parties. www.treaties.un.org, (27.7.2015).

⁷⁶³ ICCPR, Article 2.2, 2.3. www.treaties.un.org, (27.7.2015).

⁷⁶⁴ ICCPR, Article 2.1. www.treaties.un.org, (27.7.2015).

⁷⁶⁵ ICCPR, Article 3. www.treaties.un.org, (27.7.2015).

⁷⁶⁶ Articles 2, 17 and 26 of the ICCPR, www.treaties.un.org, (27.7.2015).

⁷⁶⁷ ICCPR, Article 17, www.treaties.un.org, (27.7.2015).

⁷⁶⁸ "Toonen v Australia Communication No. 488/1992 (1994) U.N. Doc CCPR/C/50/D/488/1992 at [8.1–8.6]" www1.umn.edu/ (27.7.2015).

marriage right (Article 23) excludes the extrapolation of a same-sex marriage right from this provision.⁷⁶⁹

In addition, although sexual orientation and gender identity are not explicitly mentioned in Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), or Article 26 of the ICCPR,⁷⁷⁰ the Human Rights Committee (HRC) has stated that discrimination on grounds of sexual orientation is prohibited under the ICCPR.⁷⁷¹

The criminalization of homosexual conduct is incompatible with the state parties' obligation to protect the human rights of all persons, including those of a different sexual orientation and gender identity, in a non-discriminatory manner, by inference they are also under an obligation to repeal any legislation that might criminalize or discriminate against people on the basis of their sexual orientation.⁷⁷²

Equality under the International Covenant on Civil and Political Rights (ICCPR)

The ICCPR encompasses the rights of sexual minorities through the equality clause in Articles 26, and 3. Articles 2.1 and 3 are reinforced by Article 26, which provides that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law'. Article 3 provides an accessory non-discrimination principle. An

⁷⁶⁹ "Joslin v New Zealand (2002) Comm. No. 902/1999 U.N. Doc. A/57/40 www1.umn.edu/ (27.7.2015).

⁷⁷⁰ Article 26 ICCPR states: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' (Report of the United Nations Special Rapporteur on the right to education, 23 July 2010, UN Doc. A/65/162, para 23), (27.7.2015).

⁷⁷¹ www2.ohchr.org/english/bodies/hrc/docs/ngos/IGLHRC, (27.7.2015).

⁷⁷² Dimitrina Petrova, "The Use of Equality and Anti-Discrimination Law in Advancing LGBT Rights," In Corinne Lennox & Matthew Waites (eds.), *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalization and Change*, London: University of London, 2013.

accessory principle means that it cannot be used independently and can only be relied upon in relation to another right protected by the ICCPR. Article 26 contains a revolutionary norm by providing an autonomous equality principle which is not dependent upon another right under the convention being infringed. This has the effect of widening the scope of the non-discrimination principle beyond the scope of ICCPR.⁷⁷³

Hence, the underlying rationale of Articles 26 and 2.1 and 3 is to ensure equal treatment and non-discrimination on listed and unlisted grounds. The interpretation of Articles 26 and 2.1 has been considered by the HRC. In the *Toonen* case, the Committee interpreted these provisions liberally and held that the reference to 'sex' as one of the grounds of non-discrimination in article 2, paragraph 1, and article 26 of the ICCPR is to be taken as including sexual orientation.⁷⁷⁴

The Right to Privacy under the International Covenant on Civil and Political Rights (ICCPR)

The United Nations Human Rights Committee (HRC) in the case of *Toonen v Australia* considered the interpretation of Article 17 of the ICCPR.⁷⁷⁵ In this case, a Tasmanian law prohibiting all private male same-sex activity was found to violate the right to privacy provision encapsulated in ICCPR.⁷⁷⁶ The committee found that undisputed adult consensual sexual activity in private is covered by the concept of privacy therefore Mr. Toonen was negatively affected by the continued existence of the provisions of a criminal code that prohibits such activity.⁷⁷⁷

HRC's position in this case suggests that in the international human rights arena adult consensual sexual activity in private is protected.⁷⁷⁸ I

⁷⁷³ Articles 2.1, 3, and 26 ICCPR, www.treaties.un.org. (27.10.2015).

⁷⁷⁴ *Toonen v Australia*, Para 8.7, www1.umn.edu, (27.10.2015).

⁷⁷⁵ Communication No 488/1992, *Toonen v Australia*, UNH.R Committee (31 March 1994) UN Doc NoCCPR/C50/D/488/1992, 1 IRR97 www1.umn.edu (27.10.2015).

⁷⁷⁶ Article 17 of ICCPR, www.ohchr.org/, (27.10.2015).

⁷⁷⁷ Luis Edgar Francisco Huamusse, "The Rights of Sexual Minorities under the African Human Rights System," LLM, University of Pretoria, 2006.

⁷⁷⁸ *Ibid*.

am of the view that this landmark ruling turned human rights for sexual minorities into an international standard and an everlasting part of the UN agenda.⁷⁷⁹ Consequently, the *Toonen* decision has subsequently been referenced by the Committee and by other treaty bodies in making rulings regarding sexual orientation.⁷⁸⁰

ICCPR also protects the private sexual conduct of sexual minorities, arising from their sexual orientation. This right protects "private life" meaning that people are allowed to exercise their right to privacy. Any justifiable limitation of the exercise of the right to privacy must fit the criteria of reasonableness, in other words the interference must be justifiable by being necessary and proportional to the ends sought and necessary in the circumstance of the case.⁷⁸¹

The Tasmanian government justified its interference of a person's privacy, and in this case that of Mr. Toonen, by maintaining that "decriminalization of homosexual activity runs counter to the implementation of effective education programs in respect of HIV/AIDS prevention." As to whether there was a justifiable infringement on the right to privacy, the Committee applied a standard of reasonableness under which the interference must be proportional to the end sought and necessary in the circumstances. According to the HRC "criminalization was not a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS."⁷⁸²

However, the major weakness of the ICCPR in relation to the protection of sexual orientation is that only 168 states are party to the ICCPR, while 23 UN member states have not yet ratified or acceded to the ICCPR.⁷⁸³

⁷⁷⁹ "The Legacy of the Toonen vs. Australia," *Star Observer*, (21.4.2009).

⁷⁸⁰ "The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Botswana: A Shadow Report Submitted to Human Rights Watch" www.asylumlaw.org, (7.12.2015).

⁷⁸¹ Luis Edgar Francisco Huamuse, "The Rights of Sexual Minorities under the African Human Rights Systems," LLM, Cape Town: University of Western Cape, 2006.

⁷⁸² *Toonen v. Australia* para.8.3 and 8.5, www1.umn.edu, (27.10.2015).

⁷⁸³ "UN Treaty Collection: International Covenant on Civil and Political Rights", www.un.org, (7.12.2015).

Therefore, it is difficult for the ICCPR to offer universal protection of sexual minority rights because the countries which have not ratified it are not obliged to enforce it.

Yogyakarta Principles on Homosexuality

The Yogyakarta Principles were developed at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world at the Gadjah Mada University on Java, Indonesia, from 6 - 9 November 2006. The concluding document contains 29 principles adopted unanimously by the experts, along with recommendations to governments, regional inter-governmental institutions, civil society, and the UN.⁷⁸⁴

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (SOGI) is a set of principles relating to sexual orientation and gender identity. The main intention of the Yogyakarta Principles is to apply international human rights law standards to the abuse of the human rights of LGBTI people.⁷⁸⁵

However, the Yogyakarta Principles have not been adopted by the states that are members of the United Nations in a treaty, and are thus not by themselves a legally binding part of international human rights law.⁷⁸⁶ Thus, in July 2010, Vernor Muñoz, the United Nations Special Rapporteur on the right to education created controversy when he presented to the UN General Assembly an interim report on the human rights to comprehensive sexual education.⁷⁸⁷ He cited the Yogyakarta

⁷⁸⁴ Human Rights Watch World Report 2008, www.hrw.org/report/2008/ (27.10.2015).

⁷⁸⁵ Michael O'Flaherty, and John Fisher, "Sexual Orientation, Gender Identity and International Human Rights Law: Contextualizing the Yogyakarta Principles," *Human Rights Law Review* 8.2 (2008), pp. 207-248.

⁷⁸⁶ United Nations General Assembly, Official Records, Third Committee, Summary record of the 29th meeting held in New York, on Monday, 25 October 2010, para. 9, www.un.org (16.11.2015).

⁷⁸⁷ United Nations Special Rapporteur on the Right to Education, www.ohchr.org, (16.11.2015).

Principles as a Human Rights standard.⁷⁸⁸ The majority of General Assembly Third Committee members recommended against adopting the principles.⁷⁸⁹

The Representative of Malawi, speaking on behalf of all African States argued that the report reflected an attempt to introduce controversial notions and a disregard to the Code of Conduct for Special Procedures Mandate-holders as outlined in Human Rights Council resolution 8/4. She expressed alarm at the reinterpretation of existing human rights instruments, principles and concepts. The rapporteur also selectively quoted general comments and country-specific recommendations made by treaty bodies and propagated controversial and unrecognized principles, including the so-called Yogyakarta Principles, to justify his personal opinion.⁷⁹⁰

Trinidad and Tobago delegates who spoke on behalf of the Caribbean States members of CARICOM at the UN General Assembly argued that the special rapporteur had chosen to ignore his mandate, as laid down in Human Rights Council resolution 8/4, and to focus instead on the so-called "human right to comprehensive education." Such a right did not exist under any internationally agreed human rights instrument or law, and attempts to create one, far exceeded his mandate and that of the Human Rights Council.⁷⁹¹

The representative of Mauritania, speaking on behalf of the Group of Arab States at the UN General Assembly said that the Arab States were dismayed in two ways. First, they accused the rapporteur of attempting

⁷⁸⁸ Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations. A very important contribution to thinking in this area was made by the 2006 Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity. The Special Rapporteur fully endorses the precepts of Principle 16, referring specifically to the right to education.

⁷⁸⁹ International Service for Human Rights, Majority of GA Third Committee unable to accept report on the human right to sexual education, www.ishr.rc, (14.11.2015).

⁷⁹⁰ United Nations General Assembly, Official Records, Third Committee, Summary Record of the 29th Meeting held in New York, www.un.org/en/ga/third, (26.1.2017).

⁷⁹¹ www.un.org, (14.11.2015).

to promote controversial doctrines that did not enjoy universal recognition. Second, they accused him of trying to redefine established concepts of sexual and reproductive health education, or of human rights more broadly.⁷⁹²

The Russian Federation delegates also expressed its disappointment and fundamental disagreement with the report. They argued that the rapporteur cited numerous documents which had not been agreed to at the intergovernmental level. Thus, the documents which were cited could not be considered as authoritative expressions of the opinion of the international community. In particular, Vernor Muñoz referred to the Yogyakarta Principles and also to the International Technical Guidance on Sexuality Education. The Russian Federation delegates further said that implementation of various provisions and recommendations of the Yogyakarta Principles would result in criminal prosecution for such criminal offences as corrupting youth.⁷⁹³

I am of the opinion that although the Yogyakarta Principles do not express the United Nation's official stand on LGBTI rights; nevertheless, they may serve as a guideline in the promotion and protection of LGBTI rights.

The International Debate on Homosexuality

Malawi has bi-lateral and multi-lateral relations with some international organizations and nations. This relationship has been related to financial aid to Malawi. As observed in chapter 2, some nations attach the decriminalization of homosexuality as a condition for their financial aid to Malawi. In this section, I will discuss the debate of homosexuality in some of the nations which have relations with Malawi.

Homosexuality in the United Kingdom (UK)

This section of the study presents a discussion on the progression of LGBT rights in the United Kingdom. This discussion is important for this

⁷⁹² Ibid.

⁷⁹³ Ibid.

study because Malawi was once a British colony. John Buchanan, a missionary and the Acting Vice Consul, proclaimed the Shire Highlands a protectorate on September 21, 1889.⁷⁹⁴ George Shepperson and Thomas Price argue that the Shire Highlands protectorate was extended in 1891 to include the whole of present day Malawi. It was then called the Nyasaland and District Protectorate. In 1907, the British Central African Protectorate was named Nyasaland.⁷⁹⁵ Malawi adopted the British sodomy laws into its own penal code of 1930.⁷⁹⁶ Therefore, the assumption of this study is that the development of LGBT rights in the UK, which is one the main donors for Malawi, has some implications on the homosexual debate in Malawi.

Homosexuality as an Offence in the United Kingdom

The *Buggery Act* was adopted in England in 1533 during the reign of Henry VIII outlawing homosexuality as an offence punishable by execution.⁷⁹⁷ James Pratt and John Smith were the last two persons to be executed for sodomy in 1835.⁷⁹⁸

The Offences against the Person Act of 1861 removed the death penalty for homosexuality but male homosexual acts remained illegal and were punishable by imprisonment.⁷⁹⁹ The Labouchere Amendment, section 11 of the Criminal Law Amendment Act 1885, was enacted broadly to

⁷⁹⁴ Christoff Martin Paw, *Mission and Church in Malawi*, Lusaka, 1980.

⁷⁹⁵ George Shepperson and Thomas Price, *Independent African*, Edinburgh University Press, 1958.

⁷⁹⁶ Emmie Chanika, John L. Lwanda and Adamson S. Muula, Gender, Gays and Gain: The Sexualized Politics of Donor Aid in Malawi, *Africa Spectrum*, Vol 48, No 1, (2013).

⁷⁹⁷ www.britannica.com/topic/Buggery-ActEncyclopaedia Britannica, (24.3.2016).

⁷⁹⁸ Matt Cook, Robert Mills, Randolph Trumbach, Harry Cocks, *A Gay History of Britain: Love and Sex between Men since the Middle Ages*, Santa Barbara: Greenwood World Publishing, 2007.

⁷⁹⁹ James Edward Davis, *The Criminal Law Consolidation Statutes of the 24 & 25 of Victoria*, Butterworths, 1861.

prosecute male homosexuals where actual sodomy i.e. anal intercourse, could not be proven.⁸⁰⁰

In the early 1950s, the police actively enforced laws prohibiting homosexual behaviour resulting into the imprisonment of 1, 069 gay men by the end of 1954 in England and Wales.⁸⁰¹

Wolfenden's Report on Homosexuality

The Wolfenden's Committee was set up on 24 August 1954 to consider UK law relating to homosexual offences. The Report of the Departmental Committee on Homosexual Offences and Prostitution, popularly known as the Wolfenden's Report, was published on 3 September 1957.⁸⁰²

The Wolfenden's report offered a new framework for regulating morals that had become enormously influential. The report made a crucial distinction between private actions and public order. It proposed that it should not be the function of the law to regulate private behaviour that does not harm anyone else. However distasteful others might find it, its role was to establish the framework of *public* order.⁸⁰³

The practical implications of the Wolfenden's report included the decriminalization of consensual male homosexuality and, by extension, of other forms of activity that could be regarded as essentially private and individual choices. Thus, it conjured into being for the first time in British law the notion of the distinct homosexual personage. This paralleled the growth of a more public and affirming homosexual identity which, especially with the advent of the gay liberation movement in the

⁸⁰⁰ Morris B. Kaplan, *Sodom on the Thames: Sex, Love, and Scandal in Wilde Times*, NY: Cornell University Press, 2005.

⁸⁰¹ "The *Pinknews* Guide to the History of England and Wales Equal Marriage," *Pinknews.co.uk*, (24.3.2016).

⁸⁰² Great Britain, Committee on Homosexual Offences, and Prostitution, *The Wolfenden Report: Report of the Committee on Homosexual Offences and Prostitution*, 1963, pdf. (16.3.2016).

⁸⁰³ Jeffrey Weeks, "Wolfenden and beyond: the Remaking of Homosexual History," *www.historyandpolicy.org*, (24.3.2016).

1970s, reshaped perceptions of homosexuality and hugely influenced the development of a vibrant new culture.⁸⁰⁴

Geoffrey Fisher, the Archbishop of Canterbury, supported the Wolfenden's Report in October 1957. He argued that there was a sacred realm of privacy into which the law, generally speaking, must not intrude. This is a principle of the utmost importance for the preservation of human freedom, self-respect, and responsibility.⁸⁰⁵ I am of the opinion that Archbishop Fisher's support of the Wolfenden's Report consequently shaped the Church of England's view towards homosexuality.

Decriminalization of Homosexual Acts

The Sexual Offences Act 1967 was accordingly passed and received Royal Assent on 27 July 1967 after an intense late-night debate in the House of Commons. It maintained general prohibitions on *buggery* and *indecency* between men but provided for a limited decriminalization of homosexual acts where three conditions were fulfilled. First, the act had to be consensual. Second, the act had to take place in private. Third, the act could involve only people that had attained the age of 21. This was a higher age of consent than that for heterosexual acts, which was set at 16.⁸⁰⁶ Moreover, participation in a sexual act was limited to two people by the words "in private." This condition was interpreted strictly by the courts, which took it to exclude acts taking place in a room in a hotel, for example, and in private homes where a third person was present (even if that person was in a different room).⁸⁰⁷ These

⁸⁰⁴ Ibid.

⁸⁰⁵ Matthew Grimley, "Law, Morality and Secularization: The Church of England and the Wolfenden Report, 1954–1967." *The Journal of Ecclesiastical History* 60.04 (2009) pp. 725–741.

⁸⁰⁶ Roy Walmsley, "Indecency between Males and Sexual Offences Act 1967," *Criminal Law Review* (July 1978), pp.400–407.

⁸⁰⁷ Keith Soothill, et al., "Sex Offenders: Specialists, Generalists—or both?" *British Journal of Criminology* 40.1 (2000), pp. 56–67.

restrictions were overturned in the European Court of Human Rights in 2000.⁸⁰⁸

The 1967 Act was too restrictive and open to harsh interpretation. For instance, in the 1980s alone, there were over 20,000 convictions for the predominantly gay and consensual offences of "buggery," "gross indecency," "soliciting" and "procuring." Most of these men would never have been arrested if their partner had been a woman, since comparable heterosexual behaviour is either not a crime or is rarely prosecuted.⁸⁰⁹

Another flaw of the 1967 Act is that gay sex, for example, is only immune from prosecution if it occurs "in private." But the legal definition of private is much stricter for homosexual relations than for heterosexual acts. Gay sex is not private in the eyes of the law if more than two people "take part or are present." This criminalizes gay threesomes (sexual acts involving three people) and orgies - even when they occur in the privacy of a person's own home. It also outlaws sex between two men that is watched or videoed by a third person (male or female) who does not participate in the sexual activity. In such cases, all three people are committing illegal acts. For instance, a private house is not deemed a private place if two males have sex in a bedroom while other people are present in other parts of the house. There are no similar "in private" restrictions on heterosexual or lesbian sex.⁸¹⁰ In this way, the UK Parliament maintained discrimination and reiterated the second-class legal status of gay people.

Section or Clause 28

The 1980s saw a setback for LGBTI rights in the UK. Anti-gay campaigners alleged that the following books: (1) "Young, Gay, and Proud;" (2) "Police: Out of School;" (3) "The Playbook for Kids about Sex;" and (4)

⁸⁰⁸ "The *Pinknews* Guide to the History of England and Wales Equal Marriage," *Pinknews.co.uk*. (24.3.2016).

⁸⁰⁹ Peter Tatchell, "Still Criminal after 30 Years," www.petertatchell.net. (26.3.2016).

⁸¹⁰ *Ibid*.

"The Milkman's on his Way" were being used in schools to promote homosexuality in pupils.⁸¹¹

Section or Clause 28 of the Local Government Act 1998 caused the addition of Section 2A to the Local Government Acts 1986. The amendment was enacted on 24 May 1988 and stated that a local authority shall not intentionally "promote homosexuality or publish material with the intention of promoting homosexuality" or "promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship."⁸¹²

Since it did not create a criminal offence, no prosecution was ever brought under this provision, but its existence caused many groups to close or limit their activities or self-censor. For example, a number of lesbian, gay, bisexual and transgender student support groups in schools and colleges across Britain were closed owing to fears by council legal staff that they could breach the Act.⁸¹³ However, David Cameron, Conservative Party leader, formally apologized in June 2009 for his party introducing the law, stating that it was a mistake and offensive to gay people.⁸¹⁴

The removal of Section 28 from British law was a triumph for 21st century tolerance over 19th century prejudice. Moreover, when Section 28 was introduced it galvanized the gay rights movement, leading to protest rallies and campaign groups such as Stonewall and OutRage.⁸¹⁵ In other words, the LGBT rights movement was strengthened in the face of repressive legislation.

⁸¹¹ www.hansard.millbanksystems.com/commons/1987/dec/15/prohibition-on-promoting-homosexuality (24.3.2016).

⁸¹² Sue Sanders, Gill Spraggs, "Section 28 and education," www.web.archive.org (20.4.2016).

⁸¹³ www.knittingcircle.org.uk, (24.3.2016).

⁸¹⁴ "David Cameron apologises for Section 28," www.independent.co.uk, 2 July 2009, (19.4.2016).

⁸¹⁵ www.outrage.org.uk/ (20.4.2016).

An Equal Age of Consent

In 1979, the Home Office Policy Advisory Committee's Working Party report, *Age of Consent in Relation to Sexual Offences*, recommended that the age of consent for same-sex sexual activities should be reduced from 21 to 18, but no such legislation was enacted.⁸¹⁶

The European Commission of Human Rights in its 1 July 1997 decision in the court case of *Sutherland v. United Kingdom* found that Articles 8 and 14 of the European Convention on Human Rights were violated by a discriminatory age of consent, on the ground that there was no objective and reasonable justification for maintaining a higher minimum age for male homosexual acts.⁸¹⁷

The UK Government submitted to the European Court of Human Rights on 13 October 1997 that it would propose a Bill to Parliament for a reduction of the age of consent for homosexual acts from 18 to 16.⁸¹⁸ Ann Keen, Labour MP for Brentford and Isleworth proposed in the House of Commons an amendment to lower the age of consent to 16 on 22 June 1998. The House of Commons accepted these provisions with a majority of 207, but they were rejected by the House of Lords with a majority of 168.⁸¹⁹ Subsequently, the Sexual Offences (Amendment) Bill was re-introduced on 16 December 1998 and, again, the equalization of the age of consent was endorsed on 25 January 1999 by the House of Commons. However, this was rejected on 14 April 1999 by the House of Lords.⁸²⁰ Baroness Young, a leader of the campaign against

⁸¹⁶ Matthew Waites, "Inventing a 'Lesbian Age of Consent'? The History of the Minimum Age for Sex between Women in the UK," *Social & Legal Studies* 11.3 (2002) pp. 323-342.

⁸¹⁷ Alastair Mowbray, "Cases and Materials on the European Convention on Human Rights," *British Year Book of International Law* 73 (2003), pp. 367-368.

⁸¹⁸ Donald Wilson Jackson, *The United Kingdom Confronts the European Convention on Human Rights*, Gainesville: University Press of Florida, 1997.

⁸¹⁹ Matthew Waites, "Equality at last? Homosexuality, Heterosexuality and the age of consent in the United Kingdom," *Sociology* 37.4 (2003), pp. 637-655.

⁸²⁰ Debbie Epstein, Richard Johnson, and Deborah Lynn Steinberg. "Twice Told Tales: Transformation, Recuperation and Emergence in the Age of Consent Debates 1998." *Sexualities* 3.1 (2000), pp. 5-30.

the amendment argued that homosexual practices carry great health risks to young people; therefore, they needed to be protected.⁸²¹

The Sexual Offences (Amendment) Act 2000 (c.44) of the Parliament of the UK changed the age of consent for male homosexual sexual activities and lesbian sexual activities from 18 to 16. This means that the age of consent for all homosexual and heterosexual acts in England is set at 16. This Act also introduced, for the first time, an age of consent for lesbian sexual acts, as previously there had been no legislation concerning it.⁸²²

The 2003 Sexual Offences Act sought to remove any legal distinction in the criminal law between heterosexual and homosexual activity. All sexual activity with under-16s, whether heterosexual or homosexual, is now covered by the same laws.⁸²³

Proposals have been made that since gay relationships often do not last long, the new age of consent at 16 increases the risk of contracting HIV/AIDS to young boys. Therefore, the UK government and pro-gay rights NGOs should create support mechanisms to help gay couples who wish to commit to each other, by forming a permanent relationship. This can be done through counselling and encouraging them to join peer groups who can be mutually discussing issues of concern regarding their sexual orientation and relationships.⁸²⁴

Civil Partnership in the United Kingdom

The Civil Partnership Act 2004 allows same-sex couples to obtain the same rights and responsibilities as by civil marriage.⁸²⁵ Civil partners are entitled to the following rights: (1) same property rights as married opposite-sex couples; (2) the same exemption as married couples on

⁸²¹ Ellis, Sonja J., and Celia Kitzinger, "Denying Equality: An Analysis of Arguments against Lowering the Age of Consent for Sex between Men," *Journal of Community & Applied Social Psychology* 12.3 (2002), pp. 167-180.

⁸²² "BBC News – Q and A: The Age of Consent," *BBC*, (29.11.2000).

⁸²³ Sexual Offences Act 2003, www.legislation.gov.uk/.../2003/, (24.3.2016).

⁸²⁴ www.avert.org/age-of-consent.htm. (4.4.2016).

⁸²⁵ "Lesbians lose legal marriage bid". www.bbc.co.uk, (31.7.2006).

inheritance tax; (3) social security and pension benefits; (4) the ability to get parental responsibility for a partner's children; (5) the responsibility for reasonable maintenance of one's partner and their children; (6) tenancy rights, full life insurance recognition, and next of kin rights in hospitals.⁸²⁶

I am of the opinion that the UK government in its bid to advance gay rights by enacting civil partnerships created another inequality since civil partnerships are not applicable to heterosexuals. A proper redress of the situation was supposed to be civil partnerships for heterosexual and homosexuals as well as legalization of gay marriages.

Same Sex Marriage in the United Kingdom

The UK Parliament passed the legislation to allow same-sex marriage in England and Wales in July 2013 and it came into force on 13 March 2014. The first same-sex marriages took place on 29 March 2014.⁸²⁷ The Scottish Parliament passed legislation to allow same-sex marriage in February 2014 and it was put in force on 16 December 2014.⁸²⁸ The first same-sex marriage ceremonies occurred in Scotland on 16 December 2014 for same-sex couples previously in civil partnerships.⁸²⁹ The first same-sex marriage ceremonies for couples not in a civil partnership occurred on 31 December 2014.⁸³⁰ However, the Northern Ireland Executive has stated that it did not intend to introduce legislation allowing for same-sex marriage in Northern Ireland.⁸³¹

⁸²⁶ Stychin, Carl F. "Couplings: Civil Partnership in the United Kingdom," *New York City L. Rev* 8 (2005), p. 543.

⁸²⁷ "Same-sex Marriage now Legal as first Couples Wed," *BBC News*, (29.3.2014).

⁸²⁸ "Same-sex marriage becomes legal in Scotland," *Scotsman*, (16.12.2014).

⁸²⁹ *Ibid.*

⁸³⁰ "First same-sex weddings take place in Scotland," *BBC News*, (31.12.2014).

⁸³¹ "Northern Ireland Assembly rejects Same-sex Marriage" *Pink News*, (27.4.2015).

Homosexual Marriages and Religion in UK

The process of legalizing same-sex marriage in the United Kingdom was cognizant of the implications of such legislation on religious organizations. Therefore, four measures were put in place to ensure the protection of religious freedoms: (1) ensuring the legislation states explicitly that no religious organization, or individual minister, can be compelled to marry same-sex couples or to permit this to happen on their premises; (2) providing an 'opt-in' system for religious organizations who wish to conduct marriages for same-sex couples, which also allows individual ministers to continue to refuse to perform same-sex marriage even when their religious organization opts in; (3) amending the Equality Act 2010 to reflect that no discrimination claims can be brought against religious organizations or individual ministers for refusing to marry a same-sex couple or allowing their premises to be used for this purpose; and (4) ensuring that the legislation will not affect the Canon law of the Church of England or the Church in Wales, i.e., unless Canon law and the same-sex marriage legislation are changed in future, both churches will be legally barred from performing same-sex marriages.⁸³²

Furthermore, Her Majesty's Government also addressed consultation responses about the possibility that the European Court of Human Rights could force all churches to marry same-sex couples, stating:

Both the case law of the European Court of Human Rights and the rights enshrined in the European Convention on Human Rights put the protection of religious belief in this matter beyond doubt. We will draft the legislation to ensure that there is a negligible chance of a successful legal challenge in any domestic court, or the ECHR that would force any religious organization to conduct marriages for same-sex couples against their will. Any possible claims would be brought against the Government, rather than an organization to ensure religious organizations

⁸³² "Equal Marriage: The Government's Response," HM Government. 11 December 2012, www.homeoffice.gov.uk, (24.3.2016).

would not have to use their resources to fight any legal challenges.⁸³³

Discriminatory Aspects of Homosexual Marriages in UK

Six discriminatory aspects of the Marriage (Same Sex Couples) Act can be identified. First, pension inheritance rights are fewer on death of a same-sex marriage spouse. The surviving partner is not entitled to receive the full value of the deceased partner's pension. Second, it does not show marriage equality because the bans on civil partnerships for straight couples still remain in force. Third, the existing grounds for the annulment of a marriage - non-consummation and adultery - do not apply in the case of same-sex marriages. Fourth, there is no restoration of the marriages of transgender people that were forcibly annulled as a precondition for them securing a gender recognition certificate. Fifth, under the so-called "quadruple lock" legislation, the Church of England and the Church in Wales are explicitly banned from performing religious same-sex marriages. While other faiths can "opt in" to marry LGBT people, these two denominations are prohibited. This is not only homophobic discrimination; it is also an attack on religious freedom. Sixth, the special requirements for registering premises for the conduct of religious same-sex marriages are more restrictive than for opposite-sex marriages in religious premises.⁸³⁴

I am of the view that although the enactment of same-sex marriage removed the last major legal discrimination against lesbian, gay, bisexual and transgender (LGBT) people in the UK, the government and parliament should be persuaded to enact legislation on equal marriage.

Implications of UK's LGBT Rights on Malawi

The UK government has on several occasions raised concerns over the violation of LGBTI rights in Malawi. For instance, in November 2011,

⁸³³ Ibid.

⁸³⁴ www.newstatesman.com/uk-politics/2013/07/why-our-new-same-sex-marriage-not-yet-equal-marriage (26.3.2016).

David Cameron, the former British Prime Minister stated that Commonwealth member states refusing to decriminalize homosexuality risk losing British aid.⁸³⁵ Deidre Brock, SNP Member of Parliament for Edinburgh North, asked the UK Government to make urgent representations to the Malawian government to live up to their international human rights obligations by dropping the charges of gay suspects.⁸³⁶ Michael Nevin, the former British High Commissioner to Malawi, urged the Malawi government to respect LGBTI rights.⁸³⁷

Therefore, the UK government is interested in the promotion of LGBTI rights in Malawi. However, I have observed one problem with the western interventions of gay rights in African nations. It has practically taken these countries over three centuries to fully recognize and grant LGBTI rights. Yet they are expecting African nations to immediately grant LGBTI rights. For instance, same-sex marriages were legalized in UK as late as 13 March 2014⁸³⁸ and in USA as late as 26 June 2015.⁸³⁹ Thus, it is inconceivable to expect an instant legalization of homosexuality in Africa without giving due time to African nations to properly process through the homosexual debate. Moreover, such perceived western interference on the sovereignty of African states has resulted in an upsurge of homophobic legislations.⁸⁴⁰

Homosexuality in the United States of America (USA)

The United States established diplomatic relations with Malawi in 1964, following its full independence from the United Kingdom. Malawi was a

⁸³⁵ "Cameron's Statement on Aid Could Worsen Human Rights and Governance in Malawi," *Nyasa Times*, (8.11.2011).

⁸³⁶ Thom Chiumia, "UK Parliament Discusses Malawi Gay Horrifying News," *Nyasa Times*, (17.12.2015).

⁸³⁷ Ibid.

⁸³⁸ "Same-sex Marriage now Legal as First Couples Wed," *BBC News*, (29.3.2014).

⁸³⁹ "U.S. Supreme Court Legalizes Same-sex Marriage Nationwide," *Compliance Bulletin*, www.popsilaw.com, (1.3.2016).

⁸⁴⁰ Richard Downie, Revitalizing the Fight against Homophobia in Africa, A Report of the CSIS Global Health Center, May 2014, (12.11.2015).

one-party state from 1966 to 1994. The transition to multi-party democracy in 1994 strengthened bilateral relations between the United States and Malawi and the two countries have worked together to advance health, education, agriculture, energy, and environmental stewardship in Malawi.⁸⁴¹ Malawi and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund, World Bank, and World Trade Organization.⁸⁴² Therefore, the assumption of this study is that the development of LGBTI rights in the US has implications on the homosexual debate in Malawi.

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights in the United States have evolved over time culminating in a 26 June 2015, U.S. Supreme Court ruling in the *Obergefell v. Hodges* case which stated that all states must license and recognize marriage between same-sex couples.⁸⁴³ Thus, this section of the book analyzes the progress of LGBTI rights in the United States of America (USA).

United States Laws against Homosexuality

The strongest expansions of LGBT rights in the United States have come from the courts.⁸⁴⁴ Therefore, it is pertinent for this book to analyze the various laws and court rulings that have contributed to the LGBTI discourse.

Thomas Jefferson on Sodomy

In 1779, Thomas Jefferson, an American Founding Father and a principal author of the Declaration of Independence, wrote a law in Virginia which contained the punishment of castration for men who engage in sodomy. Jefferson intended this to be a liberalization of the sodomy

⁸⁴¹ www.state.gov/r/pa/ei/bgn/7231.htm (26.5.2016).

⁸⁴² Ibid.

⁸⁴³ Yoshino, Kenji. "A New Birth of Freedom? Obergefell v. Hodges." *Harvard Law Review*, 129 (2015), pp. 147-381.

⁸⁴⁴ Nan D. Hunter, "Sex Discrimination Argument in Gay Rights Cases," *Journal of Law and Public Policy*, 9 (2000), p. 397.

laws in Virginia at that time, which prescribed death as the maximum penalty for the crime of sodomy. It was rejected by the Virginia Legislature.⁸⁴⁵

Homosexual Law on Immigrants

The U.S. immigration law has a long history of unfavourable treatment toward homosexual immigrants. The Immigration Act of 1917 excluded individuals from entering the United States who were found "mentally defective" or who had a "constitutional psychopathic inferiority." A similar Public Health Service definition of homosexuals was used simultaneously by the Immigration and Naturalization Service (INS) to reinforce the language of the Immigration Act of 1917 and effectively banned all homosexual immigrants who disclosed their sexual minority status. This ban continued with the enactment of the 1952 Immigration and Nationality Act (INA), which prohibited "aliens afflicted with a psychopathic personality, epilepsy, or a mental defect" from entry into the United States. Although the INA did not specifically address the question of whether the term "psychopathic personality" included homosexuality, Congress's intent became clear with the passage of a 1965 amendment to the INA that added "sexual deviation" as a medical ground for denying prospective immigrants entry into the United States. These discriminatory laws remained in place until the U.S. Congress passed the Immigration Act of 1990, which withdrew the phrase "sexual deviation" from the INA so that it could no longer be used as a basis for barring U.S. entry to homosexuals.⁸⁴⁶

Homosexuality and the Media

In March 1956, a Federal District Court ruled that '*ONE: The Homosexual Magazine*' was obscene under the Federal Comstock laws⁸⁴⁷ and thus

⁸⁴⁵ Patricia S. Ticer, "State Senator (D-30) in the "Virginia". www.glapn.org, (20.2.2016).

⁸⁴⁶ Tracy Davis, Opening the Doors of Immigration: Sexual Orientation and Asylum in the United States, www.wcl.american.edu/hrbrief/v6i3/immigration.htm (20.2.2016).

⁸⁴⁷ James CN Paul, and Murray L. Schwartz. "Obscenity in the Mails: A Comment on Some Problems of Federal Censorship," *University of Pennsylvania Law Review* (1957), pp. 214-253.

could not be sent through the United States Postal Service. However, the Supreme Court of the United States issued a landmark ruling in *One, Inc. v. Olsen*,⁸⁴⁸ on 13 January 1958 which overturned the previous rulings under a new legal precedent that had been established by the landmark court case, *Roth v. United States* 354 U.S. 476 (1957).⁸⁴⁹ This consequently led to a lawful distribution of gay newspapers, magazines and other publications through the public mail service.⁸⁵⁰

A Teacher's Job Terminated for being Gay

In 1972, a Tacoma Washington teacher of twelve years with a perfect record was fired after he admitted that he was gay. The Washington Supreme Court found that homosexuality was immoral and impaired his efficiency as a teacher.⁸⁵¹ The court supported its conclusion in various ways, including the definition of homosexuality in the New Catholic Encyclopedia, the criminal nature of homosexual conduct, and finding that an "immoral" person could not be trusted to instruct students as his presence would be inherently disruptive.⁸⁵² On October 3, 1977, the United States Supreme Court denied certiorari,⁸⁵³ although Justices Brennan and Marshall would have granted certiorari. This was the first homosexual discrimination decision to be aired on national network

⁸⁴⁸ www.supreme.justia.com/cases/federal/us/355/371 (20.2.2016).

⁸⁴⁹ Ibid.

⁸⁵⁰ C. Peter Magrath, "The Obscenity Cases: Grapes of Roth." *The Supreme Court Review* 1966 (1966): 7-77.

⁸⁵¹ "Supreme Court / Homosexuality Case / Nixon Tapes /tvnews.vanderbilt.edu. (20.2.2016).

⁸⁵² "Supreme Court / Washington Homosexual Firing / Bakke / Other Cases ABC News Broadcast from the Vanderbilt Television News Archive," Tvnews.vanderbilt.edu. (20.2.2016).

⁸⁵³ A word from Law Latin, meaning "to be more fully informed." In the United States, *certiorari* is most commonly associated with the writ that the Supreme Court of the United States issues to review a lower court's judgment. www.law.cornell.edu/wex/certiorari (13.4.2017).

news. In fact, it was simultaneously aired on all three national network evening news shows, reaching approximately 60 million viewers.⁸⁵⁴

Court Ruling on the First and Fourteenth Amendment Challenges

In 1985, the Supreme Court heard *Board of Education v. National Gay Task Force* which concerned first and fourteenth amendment challenges against a law that allowed schools to fire teachers for public homosexual conduct.⁸⁵⁵ The Court affirmed the lower court by an equally divided vote 4-4 allowing the Tenth Circuit's ruling that partially struck down the law to stand without setting precedent.⁸⁵⁶

Supreme Court Ruling on Same-sex Conduct

On June 30, 1986, the Supreme Court of the United States ruled in *Bowers v. Hardwick*, that same-sex intimate conduct was not protected under the right to privacy established under the Fourteenth Amendment.⁸⁵⁷

United States Pro-Gay Laws

This section of the book analyzes the pro-gay laws passed in the United States culminating into the legalization of same-sex marriages.

Model Penal Code

Prior to 1962, sodomy was a felony in every state, punished by a lengthy term of imprisonment and/or hard labour. In that year, the Model Penal Code (MPC), developed by the American Law Institute to promote uniformity among the states as they modernized their statutes, struck a compromise that removed consensual homosexuality from its criminal

⁸⁵⁴ "Supreme Court / Washington Homosexual Firing / Bakke / Other Cases ABC News Broadcast from the Vanderbilt Television News Archive," Tvnews.vanderbilt.edu. (20.2.2016).

⁸⁵⁵ "Supreme Court Hears Debate on Law Banning Gay Teachers Aaron Epstein," *Bangor Daily News*, (15.1.1985).

⁸⁵⁶ Phil Hager, "Justices Affirm Ruling Upholding Gay Teachers' Rights," *Los Angeles Times*, (27.3.1985).

⁸⁵⁷ <https://supreme.justia.com/.../us/478/.../case....> (14.3.2016).

code while making it a crime to solicit for sodomy. In 1962, Illinois adopted the recommendations of the Model Penal Code and thus became the first state to remove criminal penalties for consensual sodomy from its criminal code,⁸⁵⁸ almost a decade before any other state. Over the years, many of the states that did not repeal their sodomy laws had enacted legislation reducing the penalty. At the time of the *Lawrence* decision in 2003, the penalty for violating a sodomy law varied very widely from jurisdiction to jurisdiction among those states retaining their sodomy laws.

Supreme Court Refuses to Hear a Gay Appeal Case

In 1985, the Supreme Court refused to hear an appeal of *Gay Student Services v. Texas A & M University*, letting stand an appellate ruling ordering the university to provide official recognition of a student organization for homosexual students.⁸⁵⁹

Supreme Court's Ruling on Romer v. Evans Case

On May 20, 1996, the Supreme Court of the United States ruled in *Romer v. Evans* against an amendment to the Colorado state constitution that would have prevented any city, town or county in the state from taking any legislative, executive, or judicial action to protect homosexual or bisexual citizens from discrimination on the basis of their sexual orientation.⁸⁶⁰

Supreme Court's Ruling in Lawrence v. Texas Court Case

On June 26, 2003, the U.S. Supreme Court in a 6–3 decision in *Lawrence v. Texas* case struck down the Texas same-sex sodomy law, ruling that this private sexual conduct is protected by the liberty rights implicit in the *due process clause* of the United States Constitution. This decision invalidated all state sodomy laws insofar as they applied to noncommercial conduct in private between consenting civilians and reversed

⁸⁵⁸ Margot Canaday, "We Colonials: Sodomy Laws in America," *The Nation*. (3.9.2008).

⁸⁵⁹ *Gay Student Services v. Texas A & M University*. www.danpinello.com (12.10.2015).

⁸⁶⁰ *Ibid*.

the Court's 1986 ruling in *Bowers v. Hardwick* case that upheld Georgia's sodomy law.⁸⁶¹

Supreme Court's Ruling in United States v. Windsor Case

Ten years after the *Lawrence* decision, the Supreme Court ruled on June 26, 2013 by a 5-4 vote in *United States v. Windsor* that section 3 of the *Defense of Marriage Act* that forbade the federal government from recognizing lawfully performed same-sex marriages was illegal. The statute was found to violate the Fifth Amendment. The federal government then began to recognize lawfully performed same-sex marriages, and provide federal rights, privileges and benefits.⁸⁶²

I am of the opinion that this progression of laws and court decisions in the United States of America eventually led to the legalization of same-sex marriages in the *Obergefell v. Hodges* case in June 2015.

U.S. Supreme Court Legalizes Same-Sex Marriages

In *Obergefell v. Hodges* case, No. 14-556, 2015 WL 2473451, the U.S. Supreme Court legalized same-sex marriage on 26 June 2015.⁸⁶³ The U.S. Supreme Court ruling meant that same-sex couples have a constitutional right to marry in the United States regardless of which state they live in.⁸⁶⁴

However, the court case, *Obergefell v. Hodges*, involved challenges to same-sex bans from four states: Ohio, Tennessee, Michigan, and Kentucky. Even though the Supreme Court's decision involved these four states, the ruling affected same-sex marriage laws in every state.⁸⁶⁵ Furthermore, it meant that all states must start, or continue, issuing

⁸⁶¹ www.law.cornell.edu/supct/pdf/02-102P.ZO, (20.2.2016).

⁸⁶² Robert Barnes, "Supreme Court strikes down key part of Defense of Marriage Act," *Washington Post*, (26.6.2013).

⁸⁶³ MJ Posips, "Scotus Legalizes Same-sex Marriage," *Posips Law*, (26.6.2015).

⁸⁶⁴ "U.S. Supreme Court Legalizes Same-sex Marriage Nationwide," *Compliance Bulletin*, www.popsilaw.com, (1.3.2016).

⁸⁶⁵ MJ Posips, "Scotus Legalizes Same-sex Marriage," *Posips Law*, (26.6.2015).

marriage licenses to same-sex couples on the same terms as opposite-sex couples.⁸⁶⁶

The U.S. Court of Appeals for the Sixth Circuit held that "a State has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of State." Justice Anthony Kennedy reversed that decision, holding that the Fourteenth Amendment to the U.S. Constitution guarantees same-sex couples the right to marry.⁸⁶⁷ He wrote:

The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era. Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honourable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied. Under the Constitution, same-sex couples seek in marriage the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood to deny them this right.... They ask for equal dignity in the eyes of the law. The Constitution grants them.⁸⁶⁸

Justice Alito dissented by pointing out that the language in Kennedy's ruling about state laws demeaning gay people could be used in other legal scenarios. He talked about state marriage laws that "demean" the "dignity" and "nobility" of same-sex couples. This will be used to vilify Americans who are unwilling to assent to the new orthodoxy. In the course of its opinion, the majority compares traditional marriage laws to laws that denied equal treatment for African-Americans and women.

⁸⁶⁶ Ibid.

⁸⁶⁷ Ibid.

⁸⁶⁸ www.wxyz.com/news/national/powerful-statement-from-justice-kennedy, (1.3.2016).

The implications of this analogy will be exploited by those who are determined to stamp out every vestige of dissent.⁸⁶⁹ In other words, the judgment had implications for religious groups who consider same-sex marriage as a sin.

The Legalization of Same-sex Marriages in US and its Impact on Religion

Justice Kennedy argued that those who oppose gay marriage could do so based on decent and honourable religious or philosophical premises; nevertheless, when such personal beliefs are enacted in public policy, this demeans or stigmatizes those whose own liberty is then denied.⁸⁷⁰

Justice Kennedy says that religions, and those who adhere to religious doctrines, may continue to advocate with utmost sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.⁸⁷¹

The U.S. Supreme Court ruling that legalized same-sex marriage has some of the implications. For instance, according to its opponents, the legalization of same-sex marriages in the US would turn out to be the greatest American tragedy for the civil liberties of persons of faith, for the cause of sexual purity in the United States, and for the lives of persons struggling with same-sex attraction. People of faith should prepare for a reign of persecution and abuse as hateful, ignorant, and discriminatory bigots, and the moral equivalent of racists in every area of life in which they intersect with the secular realm, individually and in their religious institutions, with a profound negative impact as well within most mainline denominations.⁸⁷²

⁸⁶⁹ Emily Belz, "Supreme Court: Marriage is between 'Two Persons,'" *Real Matters*, (26.6.2015).

⁸⁷⁰ Ibid.

⁸⁷¹ Ibid.

⁸⁷² Robert Gagnon, "American Tragedy: Now Gird Up your Loins," www.rob-gagnon.net/homosex/SCOTUSgaymarriage.htm, (1.3.2016).

Robert Gagnon further contends that individuals, people of faith will be aggressively indoctrinated, fined, denied advancement, fired, intimidated, and subjected to ceaseless verbal abuse in public and private schools, at institutions of higher learning, at places of employment in public and private sectors, and throughout the main communication organs of the media and entertainment industry. He further warned that their institutions and businesses will be set on a collision course with the state: denied government funding, contracts, and loans; denied accreditation and tax-exempt status; and subjected to government harassment.⁸⁷³

Contrary to what proponents of same-sex marriage have argued, he believes that homosexual relationships will not be tamed by marriage but rather will destroy it and render it meaningless. The institution of marriage will not so much conform homosexual activity to the Christian understanding of marriage i.e. lifelong, monogamous, procreative, and balancing the sexes. It will eradicate the very basis in creation and nature for defining marriage as a male-female foundation.⁸⁷⁴

In view of the above discussion, I am of the opinion that the legalization of same-sex marriage in the U.S.A. has negative repercussions on the faith community which opposes gay marriage. However, Christians should respond in faith rather than fear in standing up and speaking for the truth of God's inspired word.

President Barack Obama on Homosexuality

Barack Obama, the former US president, has a long history of supporting LGBTI rights as shown by the discussion presented below:

President Barack Obama supported legalizing same-sex marriage when he first ran for the Illinois State Senate in 1996.⁸⁷⁵ However, when he ran for re-election to the Illinois Senate in 1998, he was undecided

⁸⁷³ Ibid.

⁸⁷⁴ Ibid.

⁸⁷⁵ Tracy Baim, "Obama Changed Views on Gay Marriage; 1996 Statement: 'I Favor Legalizing Same-sex Marriage,'" *Windy City Times*. (14.1.2009).

about legalizing same-sex marriage and supported including sexual orientation to the state's non-discrimination laws.⁸⁷⁶

When Obama was a US Senator for Illinois, he supported civil unions, but opposed same-sex marriage when he ran for the U.S. Senate in 2004 and for U.S. President in 2008.⁸⁷⁷ President Obama supported civil unions that would carry equal legal standing to that of marriage for same-sex couples, but believed that decisions about the title of marriage should be left to the states.⁸⁷⁸

During his time as senator, Obama co-sponsored four Acts that would promote gay rights: (1) the Employment Non-Discrimination Act; (2) Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act; (3) Tax Equity for Domestic Partner and Health Plan Beneficiaries Act; and (4) Early Treatment for HIV Act.⁸⁷⁹

In 2006, Obama voted against the Federal Marriage Amendment, which would have defined marriage as between one man and one woman in the US Constitution.⁸⁸⁰

In 2007, Senator Obama said he opposed the 1996 Defense of Marriage Act (DOMA) which was enacted on September 21, 1996. The DOMA defined marriage for federal purposes as the union of one man and one woman, and allowed states to refuse to recognize same-sex marriages granted under the laws of other states.⁸⁸¹

⁸⁷⁶ Ibid.

⁸⁷⁷ Ibid.

⁸⁷⁸ Philip Elliott, "Obama's N.H. Visit Brings Little Criticism, much Love," Associated Press, (13.2.2007).

⁸⁷⁹ www.hrc.org (20.2.2016).

⁸⁸⁰ "Obama Statement on Vote against Constitutional Amendment to Ban Gay Marriage," Barack Obama: US Senator for Illinois, obama.senate.gov/press/ (20.2.2016).

⁸⁸¹ "United States v. Windsor," www.supremecourt.gov, (20.2.2016).

The following three gay rights organizations: Houston GLBT Political Caucus,⁸⁸² Human Rights Campaign,⁸⁸³ and the National Stonewall Democrats⁸⁸⁴ endorsed Obama in the 2008 election.

Obama has taken many definitive pro-LGBT rights stances. For instance, in 2009, his administration signed the U.N. declaration that calls for the decriminalization of homosexuality.⁸⁸⁵ In June 2009, Obama became the first U.S. president to declare the month of June to be LGBT pride month, a declaration subsequently repeated in 2010 to 2015.⁸⁸⁶

On October 28, 2009, Obama signed the Matthew Shepard and James Byrd Jr., Hate Crimes Prevention Act, including gender, sexual orientation, gender identity, and disability to the federal hate crimes law.⁸⁸⁷

Barack Obama has also advanced LGBT rights by appointing LGBT individuals into high ranking positions. For instance, he nominated Sharon Lubinski to become the first openly gay Senior Technical Advisor to the Department of Commerce, making her the first openly transgender person appointed to a government post by a U.S. President.⁸⁸⁸ He has appointed the most U.S. gay and lesbian officials of any U.S. president.⁸⁸⁹

⁸⁸² Kim Chipman, "Gay Clinton Backers Defect to Obama, Eroding her Base" www.bloomberg.com, (20.2.2016).

⁸⁸³ "Human Rights Campaign endorses Obama," *Washington Blade*, (6.6.2008).

⁸⁸⁴ Tracy Baim, Wayne R. Besen, *Obama and the Gays: A Political Marriage*, CreateSpace Independent Publishing Platform, 2010.

⁸⁸⁵ Sue Pleming, "In Turnaround, U.S. Signs U.N. Gay Rights Document," *Reuters*, (18.3.2009).

⁸⁸⁶ "Obama Issues Presidential Proclamation Declaring June LGBT Pride Month – LGBTQ Nation". www.lgbtqnation.com, (20.2.2016).

⁸⁸⁷ Rachel Weiner, "Hate Crimes Bill Signed Into Law 11 Years after Matthew Shepard's Death," *Huffington Post*, (28.10.2009).

⁸⁸⁸ Jake Tapper, "President Obama Names Transgender Appointee to Commerce Department," *ABC News*, (4.1.2010).

⁸⁸⁹ "Obama Hires Trans Woman Amanda Simpson," www.intraa.org, (31.12.2009).

On 6 December 2011, President Obama issued a presidential memorandum on International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons. He stated:

"The struggle to end discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons is a global challenge, and one that is central to the United States commitment to promoting human rights. I am deeply concerned by the violence and discrimination targeting LGBT persons around the world, whether it is passing laws that criminalize LGBT status, beating citizens simply for joining peaceful LGBT pride celebrations, or killing men, women, and children for their perceived sexual orientation. That is why I declared before heads of state gathered at the United Nations, "no country should deny people their rights because of who they love, which is why we must stand up for the rights of gays and lesbians everywhere." Under my Administration, agencies engaged abroad have already begun taking action to promote the fundamental human rights of LGBT persons everywhere. Our deep commitment to advancing the human rights of all people is strengthened when we as the United States bring our tools to bear to vigorously advance this goal. By this memorandum I am directing all agencies engaged abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBT persons."⁸⁹⁰

On May 9, 2012, President Barack Obama publicly supported same-sex marriage, the first sitting U.S. President to do so.⁸⁹¹ He also called for full equality during his second inaugural address on January 21, 2013. He stated:

"our journey is not complete until our gay brothers and sisters are treated like anyone else under the law—for if we are truly

⁸⁹⁰ [www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-\(1.11.2016\)](http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-(1.11.2016)).

⁸⁹¹ Sam Stein, "Obama Backs Gay Marriage," *Huffington Post*, (9.5.2012).

created equal, then surely the love we commit to one another must be equal as well."⁸⁹²

President Obama is the first U.S. president to mention rights for gays and lesbians or use the word gay in an inaugural address.⁸⁹³

USAID, the U.S. government agency primarily responsible for delivering international aid and assistance, launched the LGBTI Global Development Partnership and "Being LGBTI in Asia," and funded a range of LGBTI human rights programmes. In 2014, USAID released its LGBT Vision for Action, a document that communicates USAID's position on LGBTI issues to internal and external stakeholders.⁸⁹⁴

On May 28, 2014, the Department of the Interior announced a new National Park Service theme study to identify places and events associated with the civil rights struggle of LGBT Americans and ensure that the agency is telling a complete story of America's heritage and history.⁸⁹⁵

In February 2015, the U.S. State Department appointed the first-ever Special Envoy for the Human Rights of LGBTI Persons to lead and coordinate U.S. diplomatic efforts to advance LGBTI rights around the globe. John Kerry announced the appointment:

I could not be more proud to announce Randy Berry as the first-ever Special Envoy for the Human Rights of LGBT Persons ... Defending and promoting the human rights of LGBT persons is at the core of our commitment to advancing human rights globally – the heart and conscience of our diplomacy. That's why we're working to overturn laws that criminalize consensual same-sex conduct in countries around the world. It's why we're building our capacity to respond rapidly to violence against LGBT persons, and it's why we're working with governments, civil society, and

⁸⁹² Noah Michelson, "Obama Inauguration Speech Makes History with Mention of Gay Rights Struggle, Stonewall Uprising," *Huffington Post*, (21.1.2013).

⁸⁹³ Kevin Robillard, "First Inaugural Use of the Word 'Gay,'" *Politico*, (21.1.2013).

⁸⁹⁴ www.whitehouse.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-community, (01.11.2016).

⁸⁹⁵ *Ibid.*

the private sector through the Global Equality Fund to support programs advancing the human rights of LGBT persons worldwide. Too often, in too many countries, LGBT persons are threatened, jailed, and prosecuted because of who they are or who they love. Too many governments have proposed or enacted laws that aim to curb freedom of expression, association, religion, and peaceful protest. More than 75 countries still criminalize consensual same-sex activity.⁸⁹⁶

On June 9, 2015, the Henry Gerber House in Chicago, IL was designated a National Historic Landmark. Once the residence of noted gay rights activist Henry Gerber, the home was where the nation's first chartered LGBTI rights organization, the Society for Human Rights, was formed in 1924. The Henry Gerber House is one of nine LGBTI sites that have been designated as a landmark or historic place during the Obama Administration.⁸⁹⁷

In 2015, the Obama administration announced it had opened a gender-neutral bathroom within the White House complex; the bathroom is in the Eisenhower Executive Office Building.⁸⁹⁸

In October 2015, after the Supreme Court's decision in *Obergefell v. Hodges*, the U.S. Department of the Treasury announced proposed regulations implementing the Supreme Court's same-sex marriage decision for federal tax purposes to ensure all individuals would be treated equally under the law.⁸⁹⁹

After the Supreme Court issued a decision in *Obergefell v. Hodges*, the Social Security Administration (SSA) began to recognize all valid same-sex marriages for purposes of determining entitlement to Social Security benefits or eligibility for Supplemental Security Income. SSA continues to work closely with the LGBT advocacy community to conduct

⁸⁹⁶ www.state.gov/secretary/remarks/2015/02/237772.htm, (1.11.2016).

⁸⁹⁷ www.whitehouse.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-community, (01.11.2016).

⁸⁹⁸ "White House complex now has a gender-neutral bathroom" - *CNN*, (29.11.2008).

⁸⁹⁹ www.whitehouse.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-community, (01.11.2016).

outreach to ensure that same-sex couples are aware of how same-sex marriage affects benefits.⁹⁰⁰

Implications of Obama's Stand on Homosexuality for the Church in USA

President Barack Obama's LGBTI rights advocacy has implications for Christians and people of other religions who believe that homosexual practice is immoral. There are at least six feared negative implications of the Obama's LGBT rights advocacy on Christians as seen by Robert Gagnon. First, LGBTI advocacy will lead to compulsory indoctrination of children in schools and adults in the workplace that homosexual practice is moral and enshrined in civil rights. Hence, gay rights opponents are bigots to be excluded from polite society. Second, it will lead to job discrimination, termination, and the imposition of fines on people who express contrary views toward homosexual practice within, and even outside, the workplace. For instance, Joes Kovacks as quoted by Gagnon states that in October 2002, Rolf Szabo, a 23 year-employee of Eastman & Co., was fired when he responded to an e-mail requiring supervisors to promote a "Coming Out Day" for gay, lesbian, bisexual, and transgender employees with the following: Please do not send me this type of information anymore, as I find it disgusting and offensive.⁹⁰¹ Third, it will lead to forced subsidization of homosexual unions through taxes. Fourth, forced offerings of goods and services that directly promote homosexual practice, irrespective of the degree to which the conscience of the provider may be violated. This includes, but is not limited to, adoption services and foster parenting, health care providers and counsellors, those who provide wedding services, legal professionals, print shops, and indeed all businesses with employees. Fifth, restrictions in the broadcasting and print media industry against homophobic utterances viewed as civil rights violations that would incur financial penalties and loss of license. Limitations also extend to free speech in the market place. Sixth, sanctions against Christian seminaries and colleges that allow discrimination against LGBTI, involving fines, loss

⁹⁰⁰ Ibid.

⁹⁰¹ Joes Kovacks, "Kodak Fires Man over Gay Stance," WorldNetDaily.com, (24.10.2002).

of tax exemptions, loss of federal funds for student loans and research, loss of tax exemption, and even loss of accreditation.⁹⁰²

Therefore, I am of the opinion that President Barack Obama emerged to be a peculiar U.S. president promoting gay rights more than any other American president in history. He did everything that could possibly be done to promote same-sex marriage in all the 50 states of America. Furthermore, he influenced his administration to pass every sexual orientation and gender identity special protection-law imaginable. However, the gay rights victory will set Christians to be on collision with federal laws because of their opposition to same-sex marriages.

Homosexuality in Germany

This section of the book will present a discussion on the progression of the LGBT rights in Germany. Germany's influence on the homosexual debate in Malawi can be seen in the light of the comments made by Dr Peter Woeste, Germany's ambassador to Malawi, pleading for the release of a gay couple: Kelvin Gonani and Cuthbert Kulemela, who were arrested in Lilongwe on homosexual charges.⁹⁰³

Pro-Gay Responses in the Homosexual Debate in German

Germany has frequently been seen as one of the most gay friendly countries in the world with recent surveys indicating that 87% of Germans viewed that homosexuality should be accepted by society. Moreover, Klaus Wowereit, the former mayor of Berlin, is one of the most famous openly gay men in Germany.⁹⁰⁴

⁹⁰² Robert Gagnon, Obama's War on Historic Christianity over Homosexual Practice and Abortion, www.robagnon.net, (20.2.2016).

⁹⁰³ Thom Chiumia, "Malawi Anti-Gay Laws Still on Suspension: Germany Says Gay Rights are Human Rights," *Nyasa Times*, (18.12.2015).

⁹⁰⁴ Rebecca Baird-Remba "World's Most Gay Friendly Countries," www.businessinsider.com, (21.4.2016).

Same-sex Unions during the Schröder Administration (1998–2005)

The Act on *Registered Life Partnerships* of 2001 was a compromise between proponents of same-sex marriage and conservatives from the two major conservative parties, whose MPs interpretation of marriage excludes gays. The act grants a number of rights enjoyed by married, opposite-sex couples. It was drafted by Volker Beck from the Greens and was approved under the Green/Social Democratic coalition government.⁹⁰⁵ The German Parliament (Bundestag) approved it in November 2000 with the government parties voting in favour and the opposition parties CDU/CSU and FDP voting against. President Johannes Rau signed the law on 16 February 2001 and it entered into force on 1 August 2001.⁹⁰⁶

The Federal Constitutional Court of Germany upheld the *Registered Life Partnerships Act* on 17 July 2002. In its determination, the Court declared that the process leading to the law's enactment was constitutional. The eight member Court further ruled, with three dissenting votes, that the substance of the law conforms to the constitution, and ruled that these partnerships could be granted equal rights to those given to married couples. The initial law had deliberately withheld certain privileges, such as joint adoption and pension rights for widow(er)s, in an effort to observe the "special protection" which the constitution provided for marriage and the family. The court determined that the "specialness" of the protection was not in the quantity of protection, but in the obligatory nature of this protection, whereas the protection of registered partnerships was at the Bundestag's discretion.⁹⁰⁷

⁹⁰⁵ Kees Waaldijk, "Others may follow: The introduction of marriage, quasi-marriage, and semi-marriage for same-sex couples in European countries." *Judicial Studies Institute Journal* 5 (2004), pp. 104-127.

⁹⁰⁶ Nina Dethloff, "Reform of German Family Law - a Battle against Discrimination," *Eur. JL Reform* 3 (2001), p. 221.

⁹⁰⁷ Russell A. Miller and Volker Röben, "Constitutional Court Upholds Lifetime Partnership Act," *German Law Journal* 3.8 (2002), p. 6.

The Bundestag passed the *Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts* (Registered Life Partnership Law [Revision] Act) on 12 October 2004. The Act increased the rights of registered life partners to include, among other things, the possibility of stepchild adoption and simpler alimony and divorce rules, but excluded the same tax benefits as in a marriage. It took effect on 1 January 2005.⁹⁰⁸

Same-sex Unions during the Merkel Administration (2005–2016)

The Federal Constitutional Court of Germany ruled in July 2008 that a transsexual person who transitioned to female after having been married to a woman for more than 50 years could remain married to her wife and change her legal gender to female. It gave the legislature one year to effect the necessary change in the relevant law.⁹⁰⁹

The Federal Constitutional Court ruled on 22 October 2009 that a man whose employer had given him and his registered partner inferior pension benefits on account of him not being married was entitled to the same benefits he would receive were he and his partner married and of opposite sexes. The decision nullified an earlier ruling from the Federal Court of Justice (BGH) regarding a Hamburg man who had been a public servant since 1991 with a supplementary pension. The public-sector pension company VBL – the largest such company in the nation – refused to give the man married status, despite the fact that he had been living in a registered civil union for eight years. This meant that his retirement benefits would be €74 less each month, and his partner would receive no surviving dependents' pension in the event of his death.⁹¹⁰ Consequently, the court's decision mandated equal rights for same-sex registered couples not just in regard to pension benefits, but

⁹⁰⁸ Katharina Boele-Woelki, "Legal Recognition of Same-Sex Relationships within the European Union," *Tul. L. Rev* 82 (2007), p. 1949.

⁹⁰⁹ Gregory A. Knott, "Transsexual Law Unconstitutional: German Federal Constitutional Court Demands Reformation of Law Because of Fundamental Rights Conflict," *Louis ULJ* 54 (2009), p. 997.

⁹¹⁰ www.news@thelocal.de, (25.4.2016).

in regard to all rights and responsibilities currently applying to married couples.⁹¹¹

The Federal Constitutional Court ruled on 17 August 2010 that the surviving partners of registered partnerships are entitled to the same inheritance tax rules as the survivors of opposite-sex marriages. Surviving marital partners paid 7—30% inheritance tax while surviving registered partners paid 17—50%.⁹¹²

On 18 February 2013, the Federal Constitutional Court broadened the adoption rights for registered partners. A partner must be allowed to adopt the other partner's adopted child, a so-called "successive adoption", and not only a partner's biological child. However, the government did not bring up a vote in parliament to change the adoption laws before it adjourned in June 2013.⁹¹³

The Federal Constitutional Court ruled on 6 June 2013 that registered partnerships should have joint tax filing benefits equal to those of married (opposite-sex) couples. The parliament had to change the law retroactively, and did so within a month.⁹¹⁴

Anti-Gay Responses in the Homosexuality Debate in German

The history of LGBTI rights in German can be traced to the adoption of Paragraph 175 which prohibited homosexual acts, shortly after Germany was unified in 1871.⁹¹⁵ Paragraph 175 was the national German

⁹¹¹ Ibid.

⁹¹² "German Court: Gay Couples Entitled to Equal Treatment on Inheritance Tax," *Canadian Press*, (17.8.2010).

⁹¹³ "Gay Adoption Ruling A Wake-Up Call for Merkel – Spiegel," *www.spiegel.de*, (25.4.2016).

⁹¹⁴ "High Court Ruling: Germany Grants Tax Equality to Gay Couples". *www.spiegel.de*, (25.4.2016).

⁹¹⁵ Erwin J. Haeberle, "Swastika, Pink Triangle and Yellow Star—the Destruction of Sexology and the Persecution of Homosexuals in Nazi Germany," *Journal of Sex Research* 17.3 (1981), pp. 270-287.

law that prohibited homosexual acts between males. It was incorporated into the German Penal Code on 15 May 1871.⁹¹⁶

Paragraph 175 stated that:

Unnatural fornication, whether between persons of the male sex or of humans with beasts, is to be punished by imprisonment; a sentence of loss of civil rights may also be passed.⁹¹⁷

Nazi Ideology and its Effect on Homosexuality

In 1933, Nazi party leader Adolf Hitler (1889-1945) was sworn in as chancellor of Germany and immediately moved to consolidate his power. The Nazi party had risen to prominence on a platform of national revitalization through an emphasis on law and order, traditional values, and racial purity that included virulent anti-Semitism and the persecution of undesirable social groups.⁹¹⁸

Nazi ideology focused on the growth and strength of the Aryan population. The Nazis considered it unlikely that homosexuals would produce children and increase the German birthrate, but would instead diminish the country's reproductive potential. They also believed that male homosexuals were weak, effeminate men who could not fight effectively for the German nation.⁹¹⁹

As the Nazis' took control of the government, efforts were intensified to stamp out the "vice" of male homosexuality and to reverse the gains previously made by homosexual-rights activists. Propaganda linked homosexuality to subversion, even treason, thereby encouraging public intolerance.⁹²⁰ Soon after coming to power, the Nazis plundered the

⁹¹⁶ Craig Kaczorowski, "Paragraph 175," www.glbtc.com, (23.4.2016).

⁹¹⁷ Ibid.

⁹¹⁸ Ibid.

⁹¹⁹ Ibid.

⁹²⁰ Ibid.

Hirschfield's Institute for Sexual Science, which had been founded in 1919, and destroyed the Institute's extensive library and archives.⁹²¹

The Nazis' early efforts toward eliminating an openly homosexual culture from Germany included closing bars and clubs where gay men and lesbians gathered, banning homophile publications such as *Die Freundschaft* (Friendship), and encouraging citizens to denounce homosexuals as "asocial parasites."⁹²²

In the "Night of the Long Knives," Hitler ordered the assassination of the leaders of the SA, the Nazi paramilitary group headed by Ernst Röhm on June 30, 1934. In justifying this purge, which helped Hitler consolidate his control of the military, the Nazi leader specifically evoked Paragraph 175 to explain the massacre as a cleansing of the party of degenerate corrupters of youth.⁹²³

The Ministry of Justice revised Paragraph 175 in 1935, punishing a broad range of "lewd and lascivious" behaviours between men. The revisions provided a legal basis for extending Nazi persecution of homosexuals which included the incarceration and murder of between 5, 000 and 15, 000 homosexual men in the Nazi concentration camps.⁹²⁴

The revised Paragraph 175 had three parts. The first part of Paragraph 175 stated:

A male who commits lewd and lascivious acts with another male or permits himself to be so abused for lewd and lascivious acts, shall be punished by imprisonment. In a case of a participant under 21 years of age at the time of the commission of the act,

⁹²¹ Kevin S. Amidon, "Sex on the Brain: The Rise and fall of German Sexual Science," *Endeavour* 32.2 (2008), pp. 64-69.

⁹²² Ibid.

⁹²³ Stefan Micheler, "Homophobic Propaganda and the Denunciation of Same-sex-desiring Men under National Socialism," *Journal of the History of Sexuality* 11.1 (2002), pp. 105-130.

⁹²⁴ Craig Kaczorowski, "Paragraph 175," www.glbtc.com (23.4.2016).

the court may, in especially slight cases, refrain from punishment.⁹²⁵

The second part of Paragraph 175a stated that:

Confinement in a penitentiary not to exceed ten years and, under extenuating circumstances, imprisonment for not less than three months shall be imposed:

1. Upon a male who, with force or with threat of imminent danger to life and limb, compels another male to commit lewd and lascivious acts with him or compels the other party to submit to abuse for lewd and lascivious acts;
2. Upon a male who, by abuse of a relationship of dependence upon him, in consequence of service, employment, or subordination, induces another male to commit lewd and lascivious acts with him or to submit to being abused for such acts;
3. Upon a male who being over 21 years of age induces another male under 21 years of age to commit lewd and lascivious acts with him or to submit to being abused for such acts;
4. Upon a male who professionally engages in lewd and lascivious acts with other men, or submits to such abuse by other men, or offers himself for lewd and lascivious acts with other men.⁹²⁶

The third part of Paragraph 175b stated that:

Lewd and lascivious acts contrary to nature between human beings and animals shall be punished by imprisonment; loss of civil rights may also be imposed.⁹²⁷

Nazi Persecution of Homosexuals under Paragraph 175

The Nazi revisions of Paragraph 175 led to widespread arrests and imprisonments. The German criminal courts had interpreted the presence of the word "unnatural" ("*widernatürlich*") in the original Paragraph 175 to mean that the offense required sexual intercourse or acts resembling sexual intercourse. Hence, prosecutions required proof

⁹²⁵ Ibid.

⁹²⁶ Ibid.

⁹²⁷ Ibid.

of penetration. But with the changes introduced in the new Paragraph 175, the courts ruled that the offense no longer required such acts, and that any sexual act fulfilled the requirements of the statute.⁹²⁸

This revision of Paragraph 175 opened the door to prosecution for even relatively insignificant forms of erotic interaction between males, including kissing, holding hands, and mutual masturbation. By 1938, German courts ruled that any contact between men deemed to have sexual intent, even "simple looking" or "simple touching," could be grounds for arrest and conviction.⁹²⁹

The enforcement of the criminal law fell to the Criminal Police and the Gestapo, under the leadership of Heinrich Himmler. The Criminal Police and the Gestapo worked in tandem, occasionally in massive sweeps but more often as a follow-up to individual denunciations. The police created networks of informers and undercover agents to identify and arrest suspected homosexuals. Acting on the basis of these informants, the Gestapo arbitrarily seized and questioned suspects as well as possible corroborating witnesses. Those denounced were often forced to give up names of friends and acquaintances, thereby becoming informants themselves. The Gestapo instructed local police forces to keep lists of all men suspected of engaging in homosexual activities.⁹³⁰ The Nazis used these so-called "pink lists" to hunt down individual homosexuals during police actions. Victims of Paragraph 175 came from all levels of German society, although the majority came from the working class. Less able to afford private apartments or homes, they found partners in semi-public places that put them at greater risk of discovery or police entrapment.⁹³¹

From 1935 to 1945, approximately 100,000 men were arrested for homosexuality under Paragraph 175. Of these, nearly 78,000 were arrested between 1936 and the outbreak of World War II in 1939. Just

⁹²⁸ Ibid.

⁹²⁹ Ibid.

⁹³⁰ Ibid.

⁹³¹ Richard Plant, *The Pink Triangle: The Nazi War against Homosexuals*, New York: H. Holt, 1986.

as arrests rose precipitously after the 1935 revisions of Paragraph 175, so, too, did conviction rates, reaching more than ten times those of the last years of the Weimar Republic. Around 50,000 officially defined homosexuals were sentenced by the courts and spent time in regular prisons. Additionally, 5,000 to 15,000 were sent directly to concentration camps.⁹³²

Homosexuals in the Nazi Concentration Camps

All prisoners of the Nazi concentration camps wore marks or symbols of various colours and shapes that allowed guards and other camp functionaries to identify them by category. The uniforms of those sentenced as homosexuals bore the identifying mark of a pink triangle. Homosexual prisoners were commonly known by the slang name "the 175ers," referring to their conviction under Paragraph 175.⁹³³

Medical experiments designed to "cure" homosexuals of their "disease" were conducted because some Nazis believed homosexuality was a sickness. These experiments caused illness, mutilation, and even death, yet yielded no scientific knowledge. At the Buchenwald concentration camp, for example, Nazi physicians performed operations designed to convert homosexual men to heterosexuals. The operation consisted of surgically inserting a capsule that released the male hormone testosterone.⁹³⁴

Some criminal justice officials advocated castration as a way of "curing" sexual deviance. Homosexual defendants in criminal cases or in concentration camps could agree to castration in exchange for lenient

⁹³² Craig Kaczorowski, "Paragraph 175," www.glbtc.com (23.4.2016).

⁹³² Ibid.

⁹³³ Rüdiger Lautmann, "Gay Prisoners in Concentration Camps as Compared with Jehovah's Witnesses and Political Prisoners," *A Mosaic of Victims: Non-Jews Persecuted and Murdered by the Nazis*. Michael Berenbaum (ed.), New York University Press, 1990.

⁹³⁴ Wolfgang Röhl, "Homosexual Inmates in the Buchenwald Concentration Camp," *Journal of Homosexuality* 31.4 (1996), pp. 1-28.

sentences. Later, judges and camp officials were given the power to order castration without the consent of a homosexual prisoner.⁹³⁵

Concentration camp personnel also administered policies to "cure" homosexuals through humiliation and hard work. Guards ridiculed and beat homosexual prisoners upon arrival. Physically demanding or even life-threatening assignments in the stone quarries at Flossenbuerg and Buchenwald, or at the Dora-Mittelbau underground rocket factory, were often given to homosexuals. Homosexuals were segregated in order to prevent their "disease" from spreading to other inmates and guards.⁹³⁶

The death rate of homosexual prisoners in the Nazi concentration camps has been estimated to be as high as 60% - among the highest of non-Jewish prisoners. By 1945, with the end of World War II and the dissolution of the Nazi government, only about 4,000 homosexual prisoners in the camps had survived.⁹³⁷

Paragraph 175 after the War

After the war, homosexual survivors of the Nazi concentration camps were not seen as political prisoners but rather as criminals under Paragraph 175, which remained in effect even after liberation.⁹³⁸

The original Paragraph 175 was not eliminated until June 11, 1994, four years after the reunification of East and West Germany.⁹³⁹

Under the Allied Military Government of Germany, some homosexuals were forced to serve out their terms of imprisonment, regardless of the time already spent in concentration camps. Many homosexuals were actually re-arrested and re-imprisoned after the war. All were excluded from reparations by the German government. When the international

⁹³⁵ Geoffrey Giles, "'The Unkindest Cut of All': Castration, Homosexuality and Nazi Justice," *Journal of Contemporary History* 27.1 (1992): 41-61.

⁹³⁶ Craig Kaczorowski, "Paragraph 175," www.glbtq.com (23.4.2016).

⁹³⁷ Ibid.

⁹³⁸ Ibid.

⁹³⁹ Ibid.

community sought atonement for the victims of Hitler's Germany at the Nuremberg Trials of 1946, neither the atrocities committed against homosexuals nor Paragraph 175 were mentioned.⁹⁴⁰

Conclusion

It is noteworthy that although registered partnerships for same-sex couples have been legal since 2001, same-sex marriage is not legal in Germany. This fact seems to offer a contradiction to German's push for gay rights in Africa. It has taken them long time to grant some LGBT rights to their citizens; yet, they are expecting an African country like Malawi to maintain an unconstitutional moratorium on anti-gay laws and a subsequent decriminalization.⁹⁴¹

Homosexuality in Russia

Malawi has diplomatic relations with Russia. The Russian Ambassador to Malawi is based in Zimbabwe.⁹⁴² Both Malawi and Russia are members of the United Nations which has developed human rights instruments like Universal Declaration of Human Rights (UDHR), which is used in the homosexual debate. Therefore, the assumption of this study is that the development of LGBT rights in Russia has some implications on the homosexual debate in Malawi.

LGBTI History in Russia from 1990s to the Present

Russia decriminalized same-sex sexual activity between consenting adults in private in 1993.⁹⁴³ In 1999, homosexuality was formally removed from the list of Russian mental disorders due to endorsing

⁹⁴⁰ Robert Moeller, "The Homosexual Man Is a 'Man, 'the Homosexual Woman Is a' Woman'": Sex, Society, and the Law in Post-war West Germany," *Journal of the History of Sexuality* 4.3 (1994), pp. 395-429.

⁹⁴¹ *Since this was written, same sex marriage has been legalized in Germany.

⁹⁴² www.foreignaffairs.gov.mw/index.php/107-news/154-malawi-and-russia-to-strengthen-ties (27.5.2016).

⁹⁴³ "Russia: Update to RUS13194 of 16 February 1993 on the Treatment of Homosexuals". www.unhcr.org, (20.2.2016).

International Classification of Disease ICD-10, which had removed homosexuality in 1990.⁹⁴⁴

In 2002, Gennady Raikov led a conservative pro-government group in the Russian Duma (parliament), proposing outlawing homosexual acts. His proposal failed to generate enough votes but the suggestion generated public support from many conservative religious leaders and medical doctors.⁹⁴⁵

Nikolai Alekseev founded LGBTI Human Rights Project: Gayrussia.ru in May 2005 to fight discriminations on the basis of sexual orientation and raise awareness of LGBT issues in Russia. In July 2005, he launched the Moscow Pride initiative to celebrate gay rights. The event has been organized every year since May 2006.⁹⁴⁶

Russian LGBT Network was created in 2006 with the purpose of promoting gay rights. Within three years of its existence, it has transformed from an initiative group of several activists into an interregional public movement with 13 regional offices.⁹⁴⁷

In 2010, Russia was fined by the European Court of Human Rights under allegations by Nicolay Alekseev that cities were discriminating against gays by refusing to approve pride parades. Although they claimed a risk of violence, the court ruled that their decision "effectively approved of and supported groups who had called for their disruption."⁹⁴⁸ Nicolay Alekseev considered the ruling to be a "crippling blow to Russian homophobia on all accounts."⁹⁴⁹ In August 2012, contravening the previous ruling, Moscow upheld a ruling blocking Nikolay Alexeyev's

⁹⁴⁴ International Classification of Diseases (ICD)". World Health Organization , www.who.int, (20.2.2016).

⁹⁴⁵ Daniel Healey, "Russia" *glbtq: An Encyclopedia of Gay, Lesbian, Bisexual, Transgender, and Queer Culture*. Glbtq, Inc., www.glbtq.com, (20.2.2016).

⁹⁴⁶ www.gayrussia.eu, (20.2.2016).

⁹⁴⁷ Igor Kochetkov, Xenia Kirichenko, "The Situation of Lesbians, Gays, Bisexuals and Transgender People in the Russian Federation," www.groups.rightsinrussia.info (20.2.2016).

⁹⁴⁸ "European court fines Russia for banning Gay Parades," www.bbc.co.uk (20.2.2016).

⁹⁴⁹ Ibid.

request for permission to organize Moscow Pride for the next 100 years, citing the possibility of public disorder.⁹⁵⁰

In June 2013, Russia passed a federal anti-homosexual law banning the distribution of "propaganda of non-traditional sexual relationships" (homosexuality) to minors.⁹⁵¹ Article 6.21 of the Code of the Russian Federation on Administrative Offenses was approved by the State Duma in a 436-0 vote prior to being signed in by President Vladimir Putin. Putin gave a threefold justification for signing the federal law: to promote traditional Russian values in opposition of Western state liberalism in regards to homosexuality; to protect the children, and to boost Russia's falling birthrate.⁹⁵²

The Rise of Religious Conservatism and Homophobia in Russia

The fall of the Soviet Union, which sought to discourage religious fervour as an ideological and social control measure, brought on a revival of religious and patriotic feelings.⁹⁵³ Russians considered religion and conservative ideology as a source of stability and tradition in the midst of social upheaval and uncertainty regarding the Russian national identity.⁹⁵⁴ The revival of a predominantly Christian, conservative ideology corresponded with the rise in religious activism both at grassroots and national level, designed to promote traditional values.⁹⁵⁵

Vladimir Putin's rise to power coincided with an upsurge of religious conservatism in Russia. Consequently, he positioned himself as a defender of a strong national identity, which expressed itself in a more religious and family-oriented culture. Thus, he was able to exploit the latent frustration with western culture and post-modernism in

⁹⁵⁰ "Gay Parades banned in Moscow for 100 years," www.bbc.co.uk, (17.8.2012).

⁹⁵¹ "Russia passes anti-gay-law," www.theguardian.com, (20.2.2016).

⁹⁵² www.Pinknews.co.uk/2013/06/26/vladimir-putin-says-anti-gay-russian-laws-are-about-protecting-children www.piknews.com, (20.2.2016).

⁹⁵³ Ethan Alexander Davey, *The Re-birth of Russian Conservatism*, Michigan: University Bookman, 2006.

⁹⁵⁴ Ibid.

⁹⁵⁵ Ibid.

general.⁹⁵⁶ He has also supported homophobic legislation and made public remarks demonizing the LGBT community as a way of promoting traditional values.⁹⁵⁷ These legislative initiatives received popular support from the public, with some figures estimating that 85% of Russians oppose gay marriage and 87% of Russians support the ban on LGBTI pride parades.⁹⁵⁸ Evidence points to the fact that despite international trends of tolerance towards the LGBT community, Russia has seen an increase of homophobic sentiments in the last two decades.⁹⁵⁹

The Russian Orthodox Church has generally supported the hostility towards homosexuals due to its immense political influence.⁹⁶⁰ Post-Soviet Russia saw a huge revival in Orthodoxy after communism's restrictions were lifted. Harsh new economic realities increased the appeal of the faith.⁹⁶¹ By making common cause with the church and its goals, Putin has not only cast his regime's opponents as enemies of Russian tradition, but shored up his popularity because an estimated 90% of Russians identify as Orthodox.⁹⁶² The church is a marker of national identity, a source of political endorsement, and an official participant in the legislative process. In a 2009 agreement with Putin's ruling United Russia party, the country's top Orthodox official, Patriarch Kirill, won the right to review (and suggest changes to) any legislation being considered by the Duma. Since then, both Putin and Patriarch

⁹⁵⁶ David Ernst, "Putin's Right Hook: The Strategic Implications of Russia's New Conservatism," *Federalist*, 2014.

⁹⁵⁷ Ibid.

⁹⁵⁸ "Vast Majority of Russians Oppose Gay Marriage and Gay Pride Events," *Russia Today*, (12.3.2013).

⁹⁵⁹ "Russia's Antigay Laws: The Politics and Consequences of a Moral Panic," *The Disorder of Things*, (23.6.2013).

⁹⁶⁰ Stephen Ennis, "Homophobia Spreads in Russian Media," *BBC News*, (17.1.2014).

⁹⁶¹ Thomas Bremer, *Cross and Kremlin: A Brief History of the Orthodox Church in Russia*, Michigan: Eerdmans, 2013.

⁹⁶² Hannah Levintova, "How US Evangelicals Helped Create Russia's Anti-Gay Movement," *www.motherjones.com*, (20.2.2016).

Kirill have stated explicitly and repeatedly that they believe in collaboration between church and state, a partnership that is helping to drive the government's campaign against homosexuality.⁹⁶³

The Orthodox Church indirectly influenced the passing of the homosexual propaganda law. Vsevolod Chaplin, head of the Moscow Patriarchate's department of cooperation with society argued that the church was not the initiator of the homosexual propaganda laws, but many believers have been waiting for such legislation to appear. The propaganda of homosexual lifestyles should not take place where minors can feel influence; the same is true about heterosexual lechery. Public manifestations of this way of life are unacceptable for the majority of society. It is our duty to secure our children against it.⁹⁶⁴

The Homosexual Propaganda Law (436-FZ)

The Russian State Duma (Parliament) unanimously approved the homosexual propaganda bill on 11 June 2013 in a 436-0 vote.⁹⁶⁵ Ilya Ponomarev was the only Member of Parliament who abstained from voting.⁹⁶⁶ President Vladimir Putin signed the bill into law on 30 June 2013.⁹⁶⁷ This anti-homosexual law exemplifies Russia's determination to restrict LGBTI rights.

The Russian LGBTI propaganda law, also known in English-language media as Russia's "gay propaganda law" or "anti-gay law" aims at protecting children from information advocating for a denial of traditional family values. This includes materials which contain "notions of attractiveness" of non-traditional sexual relationships, present "distorted ideas about the equal social value of traditional and non-

⁹⁶³ Ibid.

⁹⁶⁴ Fred Weir, "Russian Orthodox Church: Ban Homosexuality 'Propaganda' among Minors," *The Christian Science Monitor*, (12.3.2012).

⁹⁶⁵ "Russian anti-gay bill passes protesters detained," *CBS News*, (11.6.2013).

⁹⁶⁶ Ibid.

⁹⁶⁷ "Russia passes anti-gay-law" www.theguardian.com, (20.2.2016).

traditional sexual relationships", or information that "raises interest in" non-traditional sexual relationships.⁹⁶⁸

The legislation imposes hefty fines for providing information about the lesbian, gay, bisexual, transgender and intersex (LGBTI) community to minors or holding gay pride rallies. Breaching the law will carry a fine of up to 5,000 rubles (\$156) for an individual and up to 1 million rubles (\$31,000) for media organizations.⁹⁶⁹ Businesses and organizations can also be forced to temporarily cease operations if convicted under the law. Foreigners may be arrested and detained for up to 15 days then deported, or fined up to 5,000 rubles and deported.⁹⁷⁰

The first arrest made under the law involved a person who publicly protested with a sign containing a pro-LGBTI message.⁹⁷¹ The law has also resulted in numerous arrests of Russian LGBTI citizens publicly opposing the law and there has reportedly been a surge of homophobic propaganda, violence, and even hate crimes, many of whom used the law as justification.⁹⁷²

Gay rights activists attempted to hold a "kissing rally" before the vote outside the State Duma, but they were attacked by hundreds of Orthodox activists and members of pro-Kremlin youth groups: beating them, pelting them with eggs while shouting obscenities and homophobic slurs. However, riot police intervened by arbitrarily arresting more than two dozen gay rights activists.⁹⁷³

⁹⁶⁸ Masha Lipman, "The Battle over Russia's Anti-gay Law," *The New Yorker*, (11.8.2013).

⁹⁶⁹ "Russian Anti-gay Bill Passes, Protesters Detained," *CBS News*, (11.8.2013).

⁹⁷⁰ Miriam Elder, "Russia Passes Law banning Gay 'Propaganda,'" *The Guardian*, (11.6.2013).

⁹⁷¹ "Russia: First person to be convicted under anti-gay 'propaganda' law arrested by his own parents," *Pink News*, (20.2.2016).

⁹⁷² Curtis M. Wong, "Russian LGBT Activists Arrested Under 'Gay Propaganda' Law in St. Petersburg," *Huffington Post*, (2.7.2014).

⁹⁷³ "Russian Anti-gay Bill Passes, Protesters Detained," *CBS News*, (11.7.2013).

Reactions to the Homosexual Propaganda Law (436-FZ)

Russian and foreign rights activists have decried the bill as violating basic rights.

Russia is trying very hard to make discrimination look respectable by calling it "tradition," but whatever term is used in the bill; it remains discrimination and a violation of the basic human rights of LGBT people. However, Sergey Lavrov, Russia's Foreign Minister, defended the bill by arguing that Russia does not have any international or European commitment to allow pro-homosexual propaganda.⁹⁷⁴

Public opinion in Russia tends to be among the most hostile toward homosexuality in the world, outside predominantly Muslim countries and some parts of Africa and Asia, and the level of intolerance has been rising.⁹⁷⁵ A survey conducted in June 2013 by the Russian Public Opinion Research Center (VTsIOM) found that at least 90% of those surveyed were in favour of the law.⁹⁷⁶ This means that there was a popular domestic support for the law.

Madonna, an American pop singer, denounced the law banning pro-homosexual propaganda during a 2012 concert in St. Petersburg. Madonna is reported to have said: "I am here to say that the gay community and gay people here and all around the world have the same rights – to be treated with dignity, with respect, with tolerance, with compassion, with love."⁹⁷⁷ She further posted on her Facebook page that the law was a "ridiculous atrocity."⁹⁷⁸ Conservative groups filed a

⁹⁷⁴ Miriam Elder, "Russia passes Law banning Gay 'Propaganda,'" *The Guardian*, (11.6.2013).

⁹⁷⁵ Carol Morello, "Acceptance of Gays in Society Varies Widely" *Washington Post*, (4.6.2013).

⁹⁷⁶ David M. Herszenhorn, "Gays in Russia Find no Haven, despite Support from the West," *The New York Times*, (11.8.2013).

⁹⁷⁷ Miriam Elder, "Russian Court Rejects Complaint over Madonna Gay Rights Comments," *The Guardian*, (22.11.2012).

⁹⁷⁸ Radia Kirit, "Madonna May be Charged under St. Petersburg Anti-gay Law," *ABC News*, (23.3.2012).

lawsuit against her, seeking her to pay an amount of money equivalent to nearly \$11 million, as her performance would hurt Russia's birthrate; consequently, affecting the nation's ability to adequately maintain its army.⁹⁷⁹ One of the claimants at the trial said that although Madonna had "brutally violated" the city's laws, the precedent of the lawsuit would ensure that in the future "any artist coming to our city will know now what laws exist."⁹⁸⁰ The day the case was heard, a member of the Russian parliament argued that Lady Gaga, another international pop star, should be banned from performing the song "Born This Way" during her Born This Way concert tour stop in St. Petersburg.⁹⁸¹ The "Born This Way" song justifies homosexual orientation and behaviour. However, the presiding judge dismissed the case against Madonna.⁹⁸²

Sir Elton John, a British self-confessed gay, and an acclaimed pop star told fans at a Moscow concert in December 2013 that the homosexual propaganda laws were both inhumane and isolating. He was deeply saddened and shocked over the current legislation.⁹⁸³ President Vladimir Putin of Russia spoke of Elton John in January 2014 in an attempt to show that there was no gay discrimination in Russia. He argued that Elton John is an extraordinary person, a distinguished musician, and millions of our people sincerely love him, regardless of his sexual orientation. Nevertheless, Sir Elton John responded by offering to introduce the President to Russians abused under Russian legislation banning pro-homosexual propaganda.⁹⁸⁴

⁹⁷⁹ Andrew E. Kramer, "Russian Judge Dismissed Suit against Madonna," *The New York Times*, (22.11.2012).

⁹⁸⁰ "Russia: Lawmaker accuses Madonna and Lady Gaga of breaking visa conditions and says Russian performances were illegal," *Pink News*, (1.8.2013).

⁹⁸¹ "Tilda Swinton joins protests against Russian LGBT Crackdown," 76 *CRIMES*, (4.7.2013).

⁹⁸² Andrew E. Kramer, "Russian Judge dismissed suit against Madonna," *The New York Times*, (22.11.2012).

⁹⁸³ Sean Michaels, "Elton John Voices Gay Rights Concerns at Moscow Concert," *The Guardian*, (9.12.2013).

⁹⁸⁴ "Elton John to Putin: I will show you Gay People victimized under Russian Law," *The Guardian*, (13.12.2014).

Igor Kochetkov, a Russian LGBTI Network chairman argued that the legislation led to an increase in homophobic violence in Russia by anti-gay groups. The law essentially legalized violence against LGBT people, because these groups of hooligans justify their actions with these laws, supported by their belief that gays and lesbians are not valued as a social group by the federal government.⁹⁸⁵ In August 2013, it was reported that a gay teenager was kidnapped, tortured, and killed by a group of Russian Neo-Nazis.⁹⁸⁶

The 2014 Winter Olympics in Sochi

The 2014 Winter Olympics, officially called the *XXII Olympic Winter Games* and commonly known as *Sochi 2014*, were a major international multi-sport event held from February 7 to February 23, 2014 in Sochi, Krasnodar Krai, Russia.⁹⁸⁷

The implications of the homosexual propaganda law on the Olympic Games were a major concern among athletes and the Western media since the Olympic Charter⁹⁸⁸ denounces all forms of discrimination.⁹⁸⁹

Gay rights activists took advantage of Russia's hosting of the Olympic Games in Sochi to campaign for gay rights.⁹⁹⁰ Barack Obama, United States President said that while he did not favor boycotting the Sochi Olympics over the pro-homosexual propaganda law, nevertheless, he

⁹⁸⁵ Paul Gallagher and Vanessa Thorpe, "Shocking Footage of Anti-gay Groups," *Independent*, (2.2.014).

⁹⁸⁶ "Gay Teenager Kidnapped and Tortured by Russian Homophobes claimed to have died from Injuries". *Pink News*, (6.8.2013).

⁹⁸⁷ "Sochi Elected as Host City of XXII Olympic Winter Games, International Olympic Committee," www.olympic.org, (4.7.2007).

⁹⁸⁸ www.olympic.org/Documents/olympic_charter_en.pdf (20.2.2016).

⁹⁸⁹ Ted Johnson, "Russia's Anti-Gay Laws Present Challenge for NBC's Olympics Coverage," *Variety*, (24.7.2013).

⁹⁹⁰ David Crary, Lisa Leff, "Russia's Anti-gay Laws Impact Olympics, Vodka Sales," *The Huffington Post*, (29.7.2013).

was more offended than anyone else about some of the anti-gay and lesbian legislation in Russia.⁹⁹¹

Many Western celebrities and activists openly opposed the anti-homosexual propaganda law and encouraged a boycott of the Olympic Games in Sochi, unless the games were relocated out of Russia.⁹⁹²

International pressure was leveraged to compel the International Olympic Committee (IOC) to move the Olympics to another country. There was also pressure on Olympic sponsors⁹⁹³ to take a stand for LGBTI equality.⁹⁹⁴ In the same vein, calls to boycott or protest the Olympics before, during, and after the games also went out from various organizations and groups. A number of Olympic athletes came out as a symbolic protest against the law.⁹⁹⁵ Prior to the Games, similar pressure was placed on major Olympic sponsors,⁹⁹⁶ and several non-sponsors also made public statements and gestures in support of LGBTI rights.⁹⁹⁷

Nevertheless, Vitaly Mutko, a Russian Sports Minister, responded to questions raised by the international community about the implications of the new law on the 2014 Winter Olympics Games in Sochi. He argued that the controversy over Russia's anti-gay propaganda law is an invented problem created by the Western media and that the law does

⁹⁹¹ David Nakamura, "Obama Meets with Gay Rights Activists in Russia," *The Washington Post*, (6.9.2013).

⁹⁹² Laura Smith-Spark, Phil Black, "Protests, Boycott Calls as Anger Grows over Russia Anti-gay Propaganda Laws," *CNN*, (4.8.2013.)

⁹⁹³ "HRC Calls on Olympic Sponsors to Condemn Anti-LGBT Law in Russia, Advocate for Equality Worldwide," www.hrc.org, (20.2.2016).

⁹⁹⁴ Signorelli Michelangelo, "Olympic Sponsors were Warned about Sochi; Now McDonald's and Coca-Cola Are Having a PR Nightmare," *Huffington Post*, (28.1.2014).

⁹⁹⁵ "Figure Skater Brian Boitano Comes Out as Gay Ahead of Sochi Olympics". *Huffington Post*, (19.12.2013).

⁹⁹⁶ Scott Wooldge, "McDonald's Cheers to Sochi Campaign Meets with LGBT Backlash," *Huffington Post*, (23.1.2014).

⁹⁹⁷ "Newfoundland and Labrador Communities to Raise Gay Pride Flags during Olympics," www.towleroad.com, (20.2.2016).

not discriminate against anyone.⁹⁹⁸ He further said that the law is intended to protect the right of children, whose young minds are still developing, from being exposed to propaganda about non-traditional sexual relationships, in the same way that children should be protected from messages promoting alcoholism and drug abuse.⁹⁹⁹ Viataly Mutko clarified that the rights of all Olympic athletes, organizers, and visitors in Sochi would be respected. "An athlete of non-traditional sexual orientation isn't banned from coming to Sochi. But if he goes out into the streets and starts to propagandize, then of course he will be held accountable."¹⁰⁰⁰

Other Implications of the Russian Anti-LGBTI Legislation

The Russian anti-LGBTI legislation has both domestic and international practical implications. By creating a legal shield for discrimination against its LGBT citizens, the Russian Federation has sent a message that it approves homophobia, legitimizing and possibly increasing pre-existing stigma against LGBTI citizens.¹⁰⁰¹ This legal "Othering" of LGBTI citizens has contributed to three things: (1) homophobic attacks, (2) anti-LGBTI popular Russian opinion, (3) to a proxy war in which the battle between Russia and the perceived foreign interference of the United States is being fought.¹⁰⁰²

Anti-LGBTI legislation creates significant obstacles for LGBTI citizens, activists, and NGO's due to the structure and perceptions of the Russian domestic and civil and criminal legal systems. The government is

⁹⁹⁸ "Russia's Anti-gay Law Uproar an 'Invented Problem' – Sports Minister," *The Guardian*, (18.7.2013).

⁹⁹⁹ "Russia: Gay Relationships like Drug or Alcohol Abuse, says Sports Minister – Video," *The Guardian*, (18.8.2013).

¹⁰⁰⁰ Laura Mills, "Russia will Enforce Anti-gay Law during Olympics," *The Big Story, Associated Press*, (1.8.2013).

¹⁰⁰¹ Ashlyn Clark, "Love in the time of Propaganda: Russian Anti-LGBT Laws. The International Legal Response and Future Implications," *Minnesota Journal of International Law*, Vol. 24.

¹⁰⁰² Sarah Rismyhr Englund, Introductory Essay: "The other" and "Othering," *New Narratives*, www.newnarratives.wordpress.com, (20.2.2016).

enabled through this legislation to restrict the rights of LGBTI citizens and deny LGBTI citizens and groups the ability to effectively advocate. In other words, if LGBT citizens and groups want to challenge the discriminatory laws and practices, they will essentially be challenging the Russian federal government.¹⁰⁰³ Ordinary citizens or NGO's might be deterred from challenging discriminatory laws because of the mere perception of judicial bias toward the Kremlin and the Duma (parliament).¹⁰⁰⁴

The Russian anti-LGBTI legislation codifies the unique status of LGBT citizens legitimizing and increasing pre-existing anti-LGBTI sentiments in Russian popular opinion. For instance, the language of the propaganda law 436-FZ, clearly deems LGBTI relationships as unequal and prohibits the mere portrayal of LGBT relationships as equal to heterosexual relationships.¹⁰⁰⁵

Four critical observations arise from the homosexual propaganda law. First, the categorization of heterosexual and same-sex relationships into traditional versus non-traditional indicates that same-sex relationships are both legally different and inferior to heterosexual relationships.¹⁰⁰⁶ Second, the reference to the distorted interpretation of social equivalency of traditional and non-traditional sexual relationships implies that information that argues that same-sex and heterosexual relationships are equal is misinformation aimed at harming children.¹⁰⁰⁷

¹⁰⁰³ Danielle Wiener-Bronner, "The Russian Legal System's Split Personality," *Reuters*, (26.4.2013).

¹⁰⁰⁴ Ashlyn Clark, "Love in the time of Propaganda: Russian Anti-LGBT Laws, The International Legal response and Future Implications," *Minnesota Journal of International Law*, Vol. 24.

¹⁰⁰⁵ Federal Law on Amendments to Article 5 of the Federal on Protecting Children from Information Harmful to their Health and Development and to Certain Legislative Acts of the Russian Federation with the Aim of Protecting Children from Information that Promotes Negation of Traditional Family Values. *Rossiyskaya Gazeta*, (29.12.2010).

¹⁰⁰⁶ Ashlyn Clark, "Love in the Time of Propaganda: Russian Anti-LGBT Laws, The International Legal Response and Future Implications," *Minnesota Journal of International Law*, Vol. 24.

¹⁰⁰⁷ *Ibid.*

Third, the very purpose of the law and the classification of pro-LGBTI information as "propaganda" implies that same-sex relationships are both inferior to heterosexual relationships and harmful to children. Therefore, by couching the law as an attempt to protect children from the negative influences and describing same-sex relationships as harmful to children, the law clearly implies that same-sex relationships are abnormal, amoral, and harmful to society at large.¹⁰⁰⁸ Fourth, the language of the law is vague as to what constitutes "information" and "public" dissemination of that information; hence, the law can potentially be used to outlaw any perceived or actual public homosexual behaviour, as such behaviour may harm children who are in public space.¹⁰⁰⁹ For this reason, gay pride parades have been prohibited under judicial interpretation of the law, and some worry that more extreme interpretations of the law could go as far as to outlaw simple public displays of affection between same-sex couples.¹⁰¹⁰

The anti-LGBTI legislation has ramifications for President Vladimir Putin. The anti-gay laws affect Russia's position in global politics and international influence, and perceived interference in Russian affairs by the United States of America and other western interests.¹⁰¹¹ Since President Vladimir Putin consistently uses social conservatism as a pillar of his political agenda to gain popular support, he often utilizes the issue of LGBTI rights as a way of exploiting the "us versus them" mentality that characterizes the Russian public's view of the United States.¹⁰¹² President Putin has described the U.S. recognition of LGBTI rights as indicative of the United States' departure from traditional moral values

¹⁰⁰⁸ "Full English Text of Russia's Anti-gay Law," Daily Kos, www.dailykos.com, (20.2.2016).

¹⁰⁰⁹ "Russia: Federal Laws Introducing Ban of Propaganda of Non-traditional Sexual Relationships, ARTICLE 19," (27.6.2013), www.article19.org/resources.php/37129, (20.2.2016).

¹⁰¹⁰ Ambiguities in the law could be seen as prohibiting any public displays of homosexual behaviour.

¹⁰¹¹ David Ernst, "Putin's Right Hook: The Strategic Implications of Russia's New Conservatism," *Federalist*, 2014.

¹⁰¹² *Ibid.*

and warns that if Russia does the same, it will also fall into the ditch of moral decline.¹⁰¹³

Consequently, Russian popular anti-LGBTI sentiment has become intertwined with nationalism, patriotism, and anti - U.S. sentiment. Hence, any support for LGBT rights is seen as amoral and anti-Russian.¹⁰¹⁴

Russia's position on LGBTI rights is regarded as a model for the protection of traditional values by some participants of the homosexual debate.¹⁰¹⁵ Many socially conservative groups within the U.S. applaud the efforts of Putin and Russian legislators to curb the "gay agenda," and view Russia as a protector of morality and Christian values.¹⁰¹⁶ Also, some Middle Eastern and African countries have enacted anti-LGBTI laws citing the Russian legislation as both a model for their laws and evidence that anti-LGBTI sentiment is widespread.¹⁰¹⁷ Consequently, I am of the opinion that Russian anti-LGBTI sentiment serves as a legitimizing force for homophobia around the world due to its position as one of the super powers.

I am of the opinion that the Russian anti-LGBTI legislation, particularly the homosexual propaganda law (436-FZ) has more implications than merely prohibiting the distribution of LGBT information to minors. It serves as a model of government's endorsement of homophobia both within Russia and abroad where homosexuality is seen as an attack to traditional values and morality.

¹⁰¹³ Kathy Lally, "Putin: Gay People will be Safe at Olympics if they "Leave Kids Alone," *Washington Post*, (17.1.2013).

¹⁰¹⁴ David Ernst, "Putin's Right Hook: The Strategic Implications of Russia's New Conservatism," *Federalist*, 2014.

¹⁰¹⁵ Ashlyn Clark, "Love in the time of Propaganda: Russian Anti-LGBT Laws, The International Legal Response and Future Implications," *Minnesota Journal of International Law*, Vol. 24.

¹⁰¹⁶ James Kirchik, "Why American Social Conservatives Loves Anti-gay Putin," *Daily Beast*, (1.8.2013).

¹⁰¹⁷ "Human Rights Groups Support Russia's Law to Protect Children from Homosexual Propaganda," *Lifestyle*, www.lifestyle.com, (20.2.2016).

Conclusion

This chapter has demonstrated that the global lesbian, gay, bisexual, transgender, and intersex (LGBTI) lobby is premised on the human rights foundations which call for equality of all members of the human family regardless of sexual orientation or gender identity. The concept of human rights is being positioned as a key factor in addressing global discrimination and victimization based on sexual orientation. Thus, I am of the opinion that the global advancement of LGBTI rights is inextricably linked to the universal concept of human rights which will eventually lead to the legalization of homosexuality in many countries that are currently criminalizing it. However, most international human rights instruments like UDHR and ACHPR do not explicitly single out sexual orientation as a basis for discrimination. Therefore, some countries justify the criminalization of homosexuality because it is not specifically protected by international human rights instruments.

I also observe that the process of legalizing same-sex marriages took centuries for the western countries. Yet the homosexuality debate in Africa is still in its infancy. Therefore, there is need for the Western nations to give African countries enough time to enable them internalize the problem and make informed decisions rather than forcing them to legalize homosexuality.

Chapter 6: Homosexuality, the Bible and the Quran

In discussing the homosexuality debate in Malawi, reference was made to the involvement of the religious groups like Christians and Muslims. Christians use the Bible while Muslims use the Qur'an in making their arguments on the topic of homosexuality. Therefore, this chapter presents a discussion on both the Biblical and Qur'anic texts that deal with homosexuality.

The Old Testament and Homosexuality

This section of the book will present an exegesis of some OT texts on homosexuality in order to determine whether the texts are for or against the phenomenon of homosexuality. However, before exegeting the texts, it is imperative to discuss the prevalence of homosexuality in some Ancient Near East (ANE) nations as a background for understanding homosexuality in the OT. This is because Israel was a nation in the Ancient Near East. In this discussion I will determine if there were similarities or differences on the issue of homosexuality.

Homosexuality in the Ancient Near East (ANE)

Homosexuality was known and practiced in the Ancient Near East as a form of carnal indulgence from very early time. Homosexual practice within the context of the cults was probably well established throughout the ANE long before Israel occupied Canaan.¹

Research fails to establish any satisfactory positive support for the allegation that homosexual practices were customary among the nations surrounding the Hebrews; rather, the meagre evidence suggests that

¹ R.K. Harrison, *Leviticus: An Introduction and Commentary*, Downers Grove: InterVarsity, 1980.

such practices were variously regarded as criminal, sinful or personally degrading.²

Homosexuality in Egypt

In ancient Egypt, the Talmud states that Potiphar bought Joseph for himself. Some scholars say that was implying a homosexual intention.³ Two statements from early Egyptian sources have homosexual implications. The first statement from the eighteenth dynasty (ca. 1550 B.C.), in which a man asserts, "I have not had sexual relations with a boy." The second statement from the 125th chapter of *The Book of the Dead* reads, "O his face behind him, who comes forth from the Tep-het-djat, I have not been perverted; I have not had sexual relations with a boy."⁴ These texts suggest a homosexual relationship.

There is little evidence for lesbianism in ancient Egypt. There are only two possible mentions of lesbianism. One is The Book of the Dead in Papyrus Nestanebtasheru (c. 970 BC) which mentions that she had never had sexual relations with the wife of a male. The other is related to a book of dreams, The Papyrus Carlsberg XIII (c.2nd Century AD), which shows that lesbianism was at least recognized late in Egypt's history. The book says:

If a married woman has intercourse with her, she will have an ill fate and one of her children will lacuna... If a female has intercourse with her, she will die.⁵

A metaphorical use of homosexual imagery in relation to the gods can be found in coffin texts. For instance in one coffin text we read: "I will swallow for myself the phallus (penis) of Re" and "his (the earth god Geb's) phallus (penis) is between the buttocks of his son and heir." Another coffin text, though, uses the metaphor of same-sex penetration

² D.S. Bailey, *Homosexuality and the Western Christian Tradition*, Hamden, CT: Shoe String Press, 1975.

³ Sot. 13b; I Jakobovits, "Homosexuality," In *Encjud* 8, 1972.

⁴ J.B. Pritchard, ed., *ANET*, 1950.

⁵ Ibid.

to express fearlessness regarding a god's ability to do him harm: "Atum has no power over me, for I copulate between his buttocks."⁶

Another text refers to Pharaoh Pepi II (ca. 2400 BCE) who made regular secret night-time visits to an unmarried male general, Sisene, apparently for homosexual intercourse. It is unclear whether such a relationship would have been viewed at the time as a scandal because of the homosexual connotation.⁷

The duo: Khnumhotep and Niankhkhnum, manicurists in the Palace of King Niuserre during the fifth Dynasty of Egyptian Pharaohs, circa 2400 B.C. are speculated to have been homosexual based on a representation of them embracing nose-to-nose in their shared tomb.⁸

The Legend of Seth and Horus

The most outstanding account of homosexuality in ancient Egypt is the attempt of the god Seth to violate his younger brother, Horus. The homosexual interest of Seth is seen in a papyrus fragment found in Kahun, where Seth shows a decided interest in the body of Horus. The fragment says: "The majesty of Seth said to the majesty of Horus: How beautiful are your buttocks."⁹

The legend of Seth and Horus is for political blackmail because it suggests that by attempting to homosexually rape Horus, Seth hopes that this deed disqualifies Horus from becoming the ruler of Egypt. Hence Seth argues that he deserves the office of ruler because Horus is now unfit since he has "done a man's deed to him." Clearly, from the speech of Seth, homosexual rape was both demeaning and shameful to

⁶ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

⁷ David F. Greenberg, *The Construction of Homosexuality*, University of Chicago Press, 1990.

⁸ Thomas A. Dowson, "Archaeologists, Feminists, and Queers: Sexual Politics in the Construction of the Past", in Pamela L. Geller, Miranda K. Stockett, eds., *Feminist Anthropology: Past, Present, and Future*, University of Pennsylvania Press 2006.

⁹ G.W. Griffith, ed., *The Petrie Papyri, Hieratic Papyri from Kahun and Gurob*, 2nd ed., London: Quaritchs, 1898.

the penetrated partner. Therefore, this case obviously deals not with same-sex desire but with sexual aggression used in exercising power. To be penetrated was degrading and the victim could not claim supremacy over those that made him a woman.¹⁰

Seth's character is portrayed as deviant. He is an enemy of boundaries; he does not respect the boundaries of sex and wants to have relations which are sometimes homosexual and sometimes heterosexual. He is the author of confusion, refusing to recognize the divinely ordained boundaries.¹¹ Seth does not respect existing boundaries. The frontier between the sexes, which was created by Atum, is ignored by Seth.¹² Seth's homosexuality contravenes the status quo created by the Egyptian god Atum. He fails to live in accordance with the wisdom, social, ethical, and religious regulations instituted by the gods at creation.¹³

Therefore, I conclude that the paucity of evidence makes a full categorization of same-sex intercourse in ancient Egypt impossible, but, homosexuality was clearly frowned upon in the ancient Egyptian kingdom.

Homosexuality in Assyria and Babylon

Sexual potency in Assyria and Babylon was regarded as a generative force, both venerated and worshipped. If the deity worshipped was female and the attendants also female, a female deity could be served sexually by female attendants. Invariably males feminized themselves

¹⁰ Ragies Masiwa Gunda, "The Bible and Homosexuality in Zimbabwe. A Socio-Historical Analysis of the Political, Cultural and Christian Arguments in the Homosexual Public Debate with Special Reference to the use of the Bible," PhD, University of Bamberg, 2010.

¹¹ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh-day Adventist Perspective," PhD, University of Pretoria, 2004.

¹² H. Te Velde, *Seth: God of Confusion*, Leiden: E.J. Brill, 1977.

¹³ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

by wearing female costumes and adopting a female lifestyle and could have gay practices among themselves.¹⁴

Middle Assyrian Laws on Homosexuality

The Middle Assyrian laws 19 and 20 deal with accusation of homosexuality against a man. The laws say:

If a man has secretly defamed his neighbor, saying: "He is a (common) catamite (a male who is homosexually penetrated) has spoken to him in a quarrel in the presence of (other) people, saying: 'Thou art being used as a catamite' and saying: I myself will charge thee,"

If a man has defiled his male neighbour and is charged and proof has been brought against him, he shall be defiled and made a eunuch.¹⁵

These two laws regarded the penetration of a man as if he was a woman to be both degrading and shameful. Those who were routinely penetrated by other men were to be treated as "men-women" and therefore made inferior in honour and status to those doing the penetration.¹⁶ Article 20 uses "*Lex Talionis*" principle on the man found guilty of homosexual rape as well as castration. *Lex Talionis* is a law of retaliation by which the guilty party suffers the same harm as that experienced by the injured party. The classic formulation of retaliation in biblical law is 'life for life, eye for eye, and tooth for tooth' to non-fatal body injuries.¹⁷ In this case, the principle of *Lex Talionis* explains the punishment: just as the perpetrator deprives the penetrated man of his manhood, so too the penetrator will be denied of his manhood by being castrated.¹⁸ By

¹⁴ Ibid.

¹⁵ G.R. Driver and J.C. Miles, *The Assyrian Laws Edited with Translation and Commentary*, Oxford: Clarendon Press, 1935.

¹⁶ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

¹⁷ H. B. Huffman "Lex Talionis" in: David Noel Freedman et al (eds.), *The Anchor Bible Dictionary*, vol K-N, New York: Doubleday, 1992, p. 321.

¹⁸ Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

castrating him, the community humiliates the offender permanently by reducing him from the rank of being a man. Thus, the Middle Assyrian laws disapprove homosexual practice. However, these laws show that homosexuality was prevalent in Assyria.

Babylonian Magical Texts on Homosexuality

In the Babylonian omen text, *Summa alu* (pre-seventh century BCE); five of thirty-eight omens involve homosexual intercourse. It contains two positive omens which say: "If a man copulates with his equal from the rear, he becomes the leader among his peers and brothers" and "If a man copulates with a male cult prostitute (*assinnu*), a hard destiny (or care, trouble) will leave him." The first confirms that the man who penetrated a male in his social circle lowered the latter's status. The second indicates a form of an acceptable homosexual intercourse with a male cult prostitute. A third omen, involving sex with a courtier (*gerse-qqu*), appears to be moderately negative. It says: "terrors will possess him for a whole year and leave him." Two other omens foretell a hard destiny for a man in prison who desires to mate with men "like a male cult prostitute" and a man who copulates with his house-born slave. The prison omen reflects societal disgust for a man who takes on the role of a male prostitute.¹⁹

Another text, an *Almanac of Incantations*, speaks favorably of "love of a man for a man." This suggests that same-sex intercourse between two men in Mesopotamia could be construed as something other than a power trip by a dominant partner.²⁰

Thus, in Babylon we see mixed reactions to homosexuality. First, the only acceptable form of homosexuality was religious in nature which entailed a man having homosexual intercourse with a male cult prostitute. Second, the other forms of homosexuality were abhorred because they involved an exercise of power over the one penetrated. In this

¹⁹ Ibid.

²⁰ Robert Gagnon, *the Bible and Homosexual Practice: Texts and Hermeneutics*, 2001.

case, I can conclude that homosexuality was both approved and disapproved in Babylon.

Homosexuality in Canaan

In Canaanite religion and society homosexuality prevailed as in other Ancient Near East societies.²¹

Canaanite fertility cults used hosts of male and female prostitutes as an integral part of the temple personnel. The Canaanite gods and goddesses were organically related to nature. Mostly they appear in pairs and were depicted in myths and legends as creating the world by copulation.²² Their worship apparently required a kind of imitative magic in which male and female devotees yoked their bodies sexually and spilled their seed upon the fields they desired to yield a bounty harvest.²³ In the milieu of the Canaanite fertility cult, the woman became a symbol for the ground which had to be ploughed and sowed, and an object of the lust and conquest of man.²⁴

The Canaanite god Anath took away men's bows, thereby, changing men into women. Moreover, symbols of masculinity and femininity, the wearing of clothes of the opposite sex and the carrying of implements associated with the opposite sex were used in Canaanite rituals.²⁵ Homosexual activity and bestiality were considered ways of having intercourse with the gods and thus affecting the course of nature.²⁶

Thus, Canaanite religion approved homosexuality as a means of worshipping the gods.

²¹ W.F. Albright, *Yahweh and the Gods of Canaan: Historical Analysis of Two Contrasting Faiths*, Garden City, New York: Doubleday & Co., 1968.

²² Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

²³ W.G. Cole, *Sex and Love in the Bible*, London: Hodder and Stoughton, 1960.

²⁴ T.C. de Kruijff, *The Bible on Sexuality*, De Pere, WI: St Norbert Abbey Press, 1966.

²⁵ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

²⁶ H.A. Hoffner Jr. "Symbols for Masculinity and Femininity: Their Use in Ancient Near Eastern Sympathetic Magic Rituals," *JBL* 85, 1966.

Conclusion

The evidence from the existing literature concerning homosexuality in ANE supports the argument that homosexuality was known among the nations which surrounded Israel. Moreover, it suggests that in some nations cultic homosexual practice were entirely legal. Private homosexual practices were regulated by cultic and civil laws. In some nations homosexuality was regarded as criminal, sinful, or personally degrading only when it contravened these specific regulations.²⁷

Moreover, the manifestation of homosexuality which was prevalent in the ANE nations was the one which sought to dominate and humiliate the other as a means of exercising power. In other words, some ANE attitude towards homosexuality was negative.

Homosexuality in Old Testament Texts

This section presents Old Testament texts which proscribes homosexuality and describes its punishment. This study assumes that since homosexuality was practiced in the neighbouring countries surrounding Israel, there was a possibility homosexuality existed in Israel since it was part of the ANE. In this section of the book I will determine if homosexuality was prevalent in Israel or not.

The OT texts on homosexuality include: the story of Sodom and Gomorrah (Gen 19:4-11); a story of the rape of the Levite's concubine (Judges 19:22-25); the holiness code or laws of sexual prohibitions (Leviticus 18:22; 20:13). Some people have referred to the story of David and Jonathan (1 Sam 18-23; 2 Sam 1).

There are two biblical texts that show the prevalence of homosexuality in Israel: Judges 19:25; 1 Sam 18-23; 2 Sam 1.

²⁷ Nyacherechi Matwetwe K.N., "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

Prevalence of Homosexuality in Gibeah (Judges 19: 22-25)

Judges 19:22-25 narrates the story of a Levite from Ephraim who stopped at Gibeah, which was a city of Benjamin, one of the tribes of Israel.

Socio-Historical Context of Gibeah

The word "*Gibeah*" in the Bible is used to denote a hill. Like most words of this kind it gave its name to several towns and places in Palestine, which would doubtless be generally on or near a hill.²⁸ Gibeah of Benjamin first appears in the tragic story of the Levite and his concubine (Judges 19:20). It was then a "city," with the usual open street or square, (Judges 19:15, 17, 20) and containing 700 "chosen men" (Judges 20:15). In many particulars Gibeah agrees very closely with *Tuleil-el-Ful*, a conspicuous eminence just four miles north of Jerusalem, to the right side of the road. We next meet with Gibeah of Benjamin during the Philistine wars of Saul and Jonathan (1 Samuel 13:15, 16). It now bears its full title. As "Gibeah of Benjamin" this place is referred to in 2 Samuel 23:29, and as "Gibeah" it is mentioned by Hosea, (Hosea 5:5-8; 9:9; 10:9) but it does not again appear in the history.²⁹ Therefore, Gibeah is one of the cities in Israel and it belonged to the tribe of Benjamin, one of the tribes of Israel.

The narrative in which it first appears is one of extraordinary and tragic interest, casting priceless light on the conditions prevailing in those days when "there was no king in Israel" (Judges 19). The men of Gibeah wanted to homosexually rape a Levite but instead raped his concubine all night long.³⁰

The Gibeans' Desire for the Homosexual Act

While they were enjoying themselves, some of the wicked men of the city surrounded the house. Pounding on the door, they shouted to the old man who owned the house, "Bring out the

²⁸ www.internationalstandardbible.com/ (26.3.2016).

²⁹ <http://biblehub.com/topical/g/gibeah.htm> (26.3.2016).

³⁰ Ibid.

man who came to your house so we can have sex with him." The owner of the house went outside and said to them, "No, my friends don't be so vile. Since this man is my guest, don't do this disgraceful thing. Look here is my virgin daughter and his concubine. I will bring them out to you now, and you can use them and do to them whatever you wish. But to this man, don't do such a disgraceful thing. But the men would not listen to him. So the man took his concubine and sent her outside to them, and they raped her and abused her throughout the night, and at dawn they let her go. At daybreak the woman went back to the house where her master was staying, fell down at the door and lay there until daylight" (Judges 19: 22-25).

Judges 19:22 refers to the men of Gibeah as the *sons of Belial*, meaning worthless scoundrels, sons of the devil.³¹ The word "Belial" also entails yokeless, lawless, masterless monsters; breathing devils (2 Corinthians 6:15) and such as differed from beasts, *non ratione sed oratione tantum*, by speech only, not by reason; men compact of mere incongruities and absurdities (2 Thessalonians 3:2) unreasonable wicked men; flagitious fellows.³²

These perverted men of the city surrounded the house and beat on the door. The verb form of the term beat on the door indicates that there was an increasingly loud pounding on the door. This was in no way a polite or casual request. They demanded that the Levite must bring out the man who came to his house, so that that they can know (*yada*) him carnally.³³ The men of Gibeah wanted to engage in a homosexual gang rape on the man since to "*know*" meant "to have sexual relations with."³⁴ By demanding to homosexually rape the visitor they declared their sin with impudence as Sodom, without hiding it (Isaiah 3:9).³⁵

³¹ E.W. Bullinger's Companion Bible Notes, Genesis 19, www.studylight.org (16.2.2016).

³² John Trapp Complete Commentary, Judges 19, www.studylight.org (16.2.2016).

³³ David Guzik Commentary on the Bible, Judges 19, www.studylight.org (16.2.2016).

³⁴ Peter Pett's Commentary on the Bible, Judges 19, www.studylight.org (16.2.2016).

³⁵ John Trapp Complete Commentary, Judges 19, www.studylight.org (16.2.2016).

Judges 19:23-25 relates the Levite's bargain with the men of Gibeah. He hoped to appeal to them by reason. He made the strongest plea he could think of, that the man was enjoying his hospitality. Once a man had received hospitality, the host had a sacred duty to protect him, and the crowd knew that. But he also made clear to them that their actions were wicked.³⁶ The owner of the house twice implored the mob not to act wickedly (*nebala*). The word "*Nebala*" means senseless, foolishness, disgrace, disgraceful folly (especially sin of unchastity).³⁷ The word '*Nebala*' also means stupidity, folly, insulting behaviour, willful sin, and sacrilege.³⁸ The Levite also begged them not to do this disgraceful thing (*debar hannebala*). *Debar hannebala* means senseless disgrace, outrage, crime, infamy, and impiety.³⁹ When the old man twice implored the men of the city not to do this "senseless, disgraceful thing" or "appalling act" (*nebala*, 19:23-24), what he had in mind was the humiliation and subduing of a traveller through homosexual rape. Thus he could say with reference to the women "violate (humiliate, overpower, subdue) them," rather than violate the Levite (19:24). Instead of a homosexual rape, the heterosexual rape and murder of the traveller's concubine was alleged to be the greatest atrocity committed by Israelites since the days of the exodus from Egypt (19:30).⁴⁰

Then he came at last to a resolution that it was less wickedness to prostitute the women to their lusts than the Levite. The dilemma to which he was reduced was indeed dreadful; nevertheless he is not to be justified in the proposal in offering his daughter and the Levite's concubine

³⁶ Peter Pett's Commentary on the Bible, Judges 19, www.studylight.org (16.2.2016).

³⁷ F. Brown, S. R. Driver, C.A. Briggs, *Hebrew and English Lexicon of the Old Testament*, Oxford, 1907.

³⁸ L. Koehler, W. Baumgartner, J.J. Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament*, 4 vols. 1994-1999.

³⁹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

⁴⁰ Ibid.

to satisfy the lusts of the men.⁴¹ The Benjamites will not have his daughter; for she is no stranger, and belongs to their neighbor. It is especially to this offer of his daughter that the opening words of Judges 19: 25 apply: "they would not harken." Hereupon the Levite takes his resolution, and gives them his concubine, whom they raped throughout the night.⁴²

Although the Gibeans did not engage in homosexuality with the Levite, their intention was to engage in homosexual acts with the stranger.

In conclusion, this story of the rape of the Levite's concubine demonstrates the prevalence of homosexuality in Israel for three reasons. First, the setting of the story is in the Israelite city of Gibeah. Second, it involves the men of Gibeah, who were Israelites from the tribe of Benjamin. Third, the men of Gibeah demanded to homosexually gang rape a Levite, who was also an Israelite.

The Story of David and Jonathan (1 Sam 18-23; 2 Sam 1)

The stories of David and Jonathan demonstrate the prevalence of homosexuality in Israel because they involve two Israelites.⁴³ Therefore, this section of the book will review these stories and the expressions used to describe the alleged homosexual relationship between the two and ascertain whether or not they support homosexuality.

The Socio-Historical Context of the Stories of David and Jonathan

1 and 2 Samuel are one book in the Hebrew Bible. 1 Samuel covers nearly one century of Israel's history, from Samuel's birth to King Saul's death (c. 1105-10010 B.C.). It further forms the main historical link between the time of the judges and the first of Israel's kings. 1 Samuel covers three major transitions in national leadership: from Eli to

⁴¹ Joseph Benson's Commentary of the Old and New Testaments, Judges 19, www.studylight.org, (16.2.2016).

⁴² "Lange's Commentary on the Holy Scriptures: Critical, Doctrinal, and Homiletical, Genesis 19," www.studylight.org (16.2.2016).

⁴³ Susan Ackerman, *When Heroes Love: The Ambiguity of Eros in the Stories of Gilgamesh and David*, New York: Columbia University Press, 2005.

Samuel, from Samuel to Saul, and from Saul to David. 2 Samuel deals solely with the reign of King David, a period of forty years (c. 1010-970 B.C.).⁴⁴

The issue of authorship involves 1 and 2 Samuel as a single literary unit. Since part of 1 Samuel and 2 Samuel were written after Samuel's death, Samuel served only as one contributing author (1 Samuel 10:25). The final composition was written by an inspired prophetic historian who used several sources, including the records of Samuel (2 Samuel 1:18; 1 Chronicles 27:24; 29:29); the identity of this inspired historian is unknown to us. The book was completed probably soon after 930 B.C., for 1 Samuel seems to assume the division of the kingdom (1 Samuel 27:6) and 2 Samuel ends with the last days of King David.⁴⁵

David (*Dāwīd* or *David*) and Jonathan (*Yəhōnātān* or *Yehonatan*) were heroic figures of the ancient Kingdom of Israel, who formed a covenant of friendship recorded in the books of Samuel.⁴⁶

David, the youngest son of Jesse, slays Goliath at the Valley of Elah where the Philistine army is in a standoff with the army of King Saul (Jonathan's father) (1 Samuel 17). David's victory begins a rout of the Philistines who are driven back to Gath and the gates of Ekron. Abner brings David to Saul while David is still holding Goliath's severed head. Jonathan, the eldest son of Saul, has also been fighting the Philistines (1 Samuel 14). Jonathan takes an immediate liking to David and the two forms a covenant.⁴⁷

Now it came about when he had finished speaking to Saul that the soul of Jonathan was knit to the soul of David, and Jonathan loved him as himself. Saul took him that day and did not let him return to his father's house. Then Jonathan made a covenant with David because he loved him as himself. Jonathan stripped himself of the robe that was on him and gave it to David, with his armour, including his sword and his bow and his belt. So David

⁴⁴ Donald C. Stamps, *The Full Life Study Bible, NIV*, Grand Rapids: Zondervan, 1992.

⁴⁵ Ibid.

⁴⁶ Peter J. Leithart, *A Son to Me*, Idaho: Canon Press, 2003.

⁴⁷ Ibid.

went out wherever Saul sent him, and prospered; and Saul set him over the men of war (1 Samuel 18:1-4).

As Saul continues to pursue David, the pair renews their covenant, after which they do not meet again. Eventually Saul and David are reconciled. Jonathan, however, is slain on Mt. Gilboa along with his two brothers: Abinadab and Malchi-shua, and there Saul commits suicide (1 Samuel 31:1-6). David learns of Saul and Jonathan's death and chants a lament, (2 Samuel 1:1-17). It says:

Saul and Jonathan, beloved and pleasant in their life, and in their death they were not parted; they were swifter than eagles, they were stronger than lions... How have the mighty fallen in the midst of the battle! Jonathan is slain on your high places. I am distressed for you, my brother Jonathan; you have been very pleasant to me. Your love to me was more wonderful than the love of women. How have the mighty fallen, and the weapons of war perished! (2 Samuel 1:23-27)

The covenant the two men had formed eventually led to David, after Jonathan's death, graciously seating Jonathan's son Mephibosheth, a cripple, at his own royal table instead of eradicating the former king Saul's line.⁴⁸

Arguments for Homosexuality in the Stories of David and Jonathan

The stories of David and Jonathan in 1 Samuel 18-23 and David's eulogy for Jonathan in 2 Samuel 1 are alleged to narrate a homosexual relationship which the author suppressed. Moreover, the relationship of David and Jonathan is considered as the only classic example of unabashed homosexual love of one well known biblical character for another.⁴⁹

The stories of David and Jonathan have at least four reasons that point to a homosexual relationship. First, Jonathan makes covenant with David, strips off his clothes and gives him his armour (1 Sam 18:1-3). Second, Saul berates Jonathan for becoming his own shame and the shame of his mother's nakedness because he chose David for himself (1

⁴⁸ Ibid.

⁴⁹ T.M. Homer, *Sex in the Bible*, Rutland, VT: Charles E. Tuttle, 1974.

Sam 20:30). Third, David and Jonathan kiss one another (1 Sam 20:41). Fourth, David tells how he valued Jonathan's love which was more than the love of a woman (2 Sam 1:26). If this was the case, David and Jonathan must have been both homosexual and heterosexual since they were married and had children.⁵⁰

David's first encounter with Jonathan occurred shortly after David slew Goliath. David was then brought before King Saul. The text says:

When (David) had finished speaking to Saul, the soul of Jonathan was bound (*niqsera*) to the soul of David, and Jonathan loved (*wayyehabeu*) him as his own soul. Saul took him that day and would not let him return to his father's house. Then Jonathan made a covenant with David, because he loved him as his own soul. Jonathan stripped himself of the robe that he was wearing, and gave it to David, and his armour, and even his sword and his bow and his belt. David went out and was successful wherever Saul sent him... When Saul saw that he had great success, he stood in awe of him. But all Israel and Judah loved David; for it was he who marched out and came in leading them (1 Sam 18: 1-5, 15-16 NRSV).

If 1 Samuel 18:1-4 were about Jonathan's first encounter with a woman, theologians everywhere would be writing about this as one of the greatest love stories of all time. But because the object of Jonathan's affection is a man, our cultural prejudice kicks in and we insist, notwithstanding the biblical evidence, that this could not have been more than deep friendship.⁵¹

The narrators of the books of Samuel encrypted same-sex allusions in the texts where David and Jonathan interact so as to insinuate that the two heroes were lovers. This is a case of transitory homosexuality deployed by the redactors as a textual means to assert David's rights against Jonathan's: the latter willingly alienated his princely status by

⁵⁰ Ibid.

⁵¹ David F. Greenberg, *The Construction of Homosexuality*, University of Chicago Press, 1990.

bowing down, sexually speaking, to the former.⁵² However, another view considers the various covenants Jonathan engaged David in as the superior partner gradually elevated David's status and may be seen as marriage-like.⁵³

There are six different sections in the Hebrew Bible that are highly erotic in regards to the relationship of David and Jonathan. The six sections are: (1) David and Jonathan's first meeting in 1 Sam 18:1-18:4; (2) the most important description of David and Jonathan's first few meetings in 1 Sam 19:1-19:7; (3) the incident of Saul berating Jonathan for his friendship with David in 1 Sam 20:30-20:34; (4) David fleeing from the court of King Saul in 1 Sam 20:1-20:42; (5) the description of David and Jonathan's final meeting in 1 Sam 23:15-23:18; and (6) David's lament (the Song of the Bow) for Saul and Jonathan. Of these six examples, the most important example is the last one (the Song of the Bow) due to David's assertion that Jonathan's love to David "was more wonderful than the love of women."⁵⁴

The influence of women on David seems negligible. David's name is not even associated with women until after the slaying of Goliath when Saul presents him with a wife. However, by this time he had developed a strong friendship with Jonathan. In this friendship Jonathan was the aggressor and David unreservedly responsive. Therefore, David's homosexuality is looked upon as a passing phase in the young lad's experience.⁵⁵

King Saul persecuted his very own son, referring to Jonathan's love for David as a perversion. He screamed, "You are an intimate lover to that son of Jesse." Jonathan made a beautiful love covenant with David,

⁵² Susan Ackerman, *When Heroes Love: The Ambiguity of Eros in the Stories of Gilgamesh and David*, New York & Chichester: Columbia University Press, 2005.

⁵³ Jean-Fabrice Nardelli, *Homosexuality and Liminality in the Gilgamesh and Samuel*, Amsterdam: Hakkert, 2007.

⁵⁴ Susan Ackerman, *When Heroes Love: The Ambiguity of Eros in the Stories of Gilgamesh and David*, New York & Chichester: Columbia University Press, 2005.

⁵⁵ G.W. Henry, *All the Sexes: A Study of Masculinity and Femininity*, New York: Rhinehart, 1955.

promising undying devotion. In 1 Samuel 18:3 these two young men took the *Bereeth* love oath, used in ancient marriage vows (Malachi 2:14). These two lovers secretly met in the bushes, kissed, embraced and performed *gadal* (sexual intercourse). David and Jonathan were married to each other (*laeuach*, 1 Sam 19:2) in that David publicly declared: Jonathan, beloved and lovely, very pleasant have you been to me, your love to me was very wonderful, passing the love of women (2 Sam 1:23). David also led the young men in dancing naked and after Jonathan's death developed a love relationship with Jonathan's only son.⁵⁶

Arguments against Homosexuality in the Stories of David and Jonathan

After presenting arguments supporting the homosexual allegations in the story of David and Jonathan, it is also proper to present the problems inherent in such an allegation.

The Hebrew key words in the stories of David and Jonathan are: "Knit" (*qashar*) "love" (*ahab*) "covenant" (*berith*), and "sexual intercourse" (*gadal*). Of course the words cannot be taken in isolation since they are an integral part of a context.⁵⁷

The verb "was bound" or "knit" also meaning "to league together" has no sexual connotation in the Old Testament. The verb *qashar* (to knit or bind) carries more the meaning of treason or conspiracy than "love affair." The verb "love" (*ahab*) has a wide range of meanings referring to affection between members of the opposite sex (Gen 24:67), sexual intercourse (Hosea 3:1), and affection between mother and child (Gen 25:28).⁵⁸ The verb "love" (*ahab*) also refers to affection between adults of the same sex (Ruth 4:15; 1 Sam 16:21), and between teacher and

⁵⁶ Paul Johnson, "An Essentially Private Manifestation of Human Personality': Constructions of Homosexuality in the European Court of Human Rights." *Human Rights Law Review* 10, no. 1 (2010): 67-97.

⁵⁷ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

⁵⁸ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

student (Proverbs 9:8), servant and master (Exodus 21:5), and between a whole people and a military leader (1 Sam 18:16, 22). When referring to sexual love it refers to the marital relationship as something given at creation in a positive sense. For the act of sexual intercourse a different root *yada* (to know) is used. Thus emphasis suggested by the word "ahab" is not really on sexual love but more on experiencing and desiring love.⁵⁹ The inclusion of the wider context of 1 and 2 Samuel, however, draws attention to the political overtones of the word. The word may be used in a political sense, as seen in 1 Kings 5:1 "Now Hiram king of Tyre sent his servants to Solomon, when he heard that they had anointed him king in place of his father; for Hiram always loved David." David and Hiram were involved in diplomatic and commercial arrangements for a number of years. The word "love" here describes the political amity between the states.⁶⁰

The word "ahab" describes the various covenants and friendships which David made en route to the throne. Saul "loved" David greatly, made him his armour bearer and even gave him his armour (1 Sam 16:21; 17:38-39). Here the narrator is preparing his readers for the later political use of the term. Jonathan did the same thing after David defeated Goliath (1 Sam 18:4). The passing of arms and armour from the lesser to the greater seems to have had political implications in the Ancient Near East. Jonathan seems to have been aware that David would inevitably become king (1 Sam 20:13-16), and makes David swear by "love" for him (1 Sam 20:17). Saul was also aware of the popularity of David with the people and declared: "what more can he have but the kingdom?" (1 Sam 18:8). Also, it must have been clear to both Saul and Jonathan that "all Israel and Judah loved David; for he went out and came in before them" (1 Sam 18:16). In this context, the verb denotes

⁵⁹ J. Bergman, A.O. Haldar, G. Wallis, "ahab" in *TDOT1* (1974).

⁶⁰ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

rather the kind of attachment people had to a king who would fight their battles.⁶¹

Saul's message to David has a similar connotation. "Behold the king has delight in you, and all his servants love you" (1 Sam 18:22). David is offered Saul's daughter in marriage but he refuses on the grounds that he is poor and cannot afford the bride price. Saul asks for one hundred foreskins of the Philistines as the bride price and David brings two hundred. Then Saul realizes "that the Lord was with David, and that all Israel loved him" (1 Sam 18:28).⁶²

One can correctly suggest that the word love has political rather than sexual overtones. The transferring of clothes from Jonathan to David has royal overtones suggesting a legal symbolism relegating the privilege of succession willingly to David.⁶³ In this setting, Jonathan moves beyond personal feelings of a friendly disposition and makes a solemn covenant concluded under the eyes of Yahweh in a fixed cultic form.⁶⁴ The passage indicates that covenant, league, agreement (*berith*) is not necessarily a marriage covenant but simply a pact or agreement between two men, each protecting the life of the other. Jonathan protected David from his father's wrath whereas David protected Jonathan, or rather his descendants, as he promised.⁶⁵ The solemn vow was

⁶¹ Thompson, John A. "The significance of the verb love in the David-Jonathan narratives in 1 Samuel." *Vetus Testamentum* 24, no. Fasc. 3 (1974): 334-338.

⁶² Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

⁶³ P.K. McCarter Jr., *1 Samuel: A New Translation with Introduction, Notes and Commentary*, AB 8, Garden City, New York: Doubleday, 1980.

⁶⁴ H.W. Hertzberg, *I and II Samuel: A Commentary*, Philadelphia, New York: Westminster Press, 1964, pp. 154-155.

⁶⁵ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," PhD, University of Pretoria, 2004.

necessary for both David and Jonathan because of their changing political fortunes.⁶⁶

Finally, the claim that David and Jonathan had sexual intercourse (*gadal*) appears to be more an assertion than an interpretation. 1 Samuel 20:14b reads "and they kissed one another, and wept with one another, until David recovered himself." The expression "recovered himself" is a translation of the hiphil perfect of "*gadal*." It is an obscure expression at best as evidenced by the various translations of it - recovered, exceeded etc. The lexicons do not give a sexual meaning for this verb.⁶⁷ The word "*gadal*" can be translated as "take courage,"⁶⁸ "recovered himself," "they both wept-until David wept most violently (greatly),"⁶⁹ and satiety."⁷⁰ Based on this interpretation the text means that David wept violently or until he could weep no more. There is neither philological nor contextual warrant for the translation of *gadal* as "sexual intercourse."

Jonathan's love of David is portrayed as part of a much larger love affair of the people of Israel with David, a love affair based on David's zeal for Yahweh and his military prowess in the context of a life-and-death struggle with the Philistines (18:5). Rather than responding in jealousy as his father Saul soon would, Jonathan offered his complete loyalty to David. In making a covenant with David he adopted David into the royal house or family (an extension of Saul's action in not letting David return to his father's house).⁷¹

⁶⁶ Josephus, *Antiquities* VI. 229-231, interprets the entire episode in a clearly political light.

⁶⁷ Nyacherechi Matwetwe, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

⁶⁸ W.L. Holladay, *A Concise Hebrew and Aramaic Lexicon of the Old Testament*, Leiden: E.J. Brill, 1971, p. 56.

⁶⁹ W. Gesenius, *Hebrew and Chaldee Lexicon of the Old Testament Scriptures*, tr. S.P. Tregelles, Grand Rapids, MI: Eerdmans, 1964.

⁷⁰ G. Dellling, "Sunteleia," *TDNT* 8, 1977.

⁷¹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

Jonathan's act of handing over his robe, armour, sword, bow and belt to David had political implications. Ironically, Saul attempted to clothe David with his armour for David's battle with Goliath (1 Sam 17:38-39). After David defeated Goliath, he took Goliath's own sword and killed him, then put Goliath's armour in his tent (1 Sam 17:51, 54). In 2 Kings 11:10, the priest Jehoiada brought out David's spears and shields when the time came to usurp Queen Athaliah's rule with the coronation of her grandson Joash.⁷²

Jonathan's robe (*meil*) too is probably to be regarded as royal regalia. Giving it to David symbolizes the transfer of the office of heir apparent. In 1 Sam 15:27-28, the accidental tearing of Samuel's robe by Saul is followed by Samuel's declaration that God "has torn the kingdom of Israel from you... and given it to a neighbour of yours who is better than you." Therefore, Jonathan is shown here to be transferring his privilege of succession willingly to David out of his admiration and affection to him and loyalty.⁷³

When David later learns of the deaths of Saul and Jonathan, he bemoans Jonathan's fate in endearing terms:

I am in distress because of you, my brother Jonathan; you were very dear to me (*naamta li meod*); your love to me was more wonderful to me than the love of women (2 Sam 1:26).

Jonathan's repeated display of non-sexual kindness to David at a time when Jonathan was in a position of power, selflessly risking his own life and certainly his own kingdom, surpassed anything David had ever known from a committed erotic relationship with a woman. No more and no less than this is the point of David's eulogy of his dear friend. David subsequently lived up to his covenant agreement with Jonathan by restoring the fortunes of Jonathan's crippled son Mephibosheth (2 Sam 9).⁷⁴

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

The story of David and Jonathan fails to provide persuasive support for a homosexual relationship. On no occasion does the narrator ever refer to sexual intercourse between David and Jonathan. The verbs "*sakab*" (to lie) and "*yada*" (to know) are never employed. Moreover, David's heterosexual vigour was hardly in question, as the texts that speak of his many wives, concubines, and children attest (1 Sam 18:17-29; 25:39-43; 2 Sam 3:2-5, 13-16; 5:13-16; 11). Indeed, after David's first encounter with Jonathan in chapter 18, the attention of the narrator shifts to Saul's attempt to thwart marriage between one of his daughters and David. It is clear enough from the Bathsheba episode that David could be erotically stimulated by the sight of a pretty woman bathing (1 Sam 20:42; 2 Sam 9). Of course, heterosexual desires do not necessarily preclude homosexual desires. Yet the narrator's willingness to speak of David's heterosexual sex life puts in stark relief his complete silence about any sexual activity between David and Jonathan or any sexual activity with men after Jonathan's death.⁷⁵

Therefore, I am of the opinion that the stories of David and Jonathan do not support homosexuality because of two reasons. First, the stories do not specifically mention the fact that the two were involved in homosexual practice. Second, David and Jonathan's relationship conveys a political point: David is not a rogue usurper of the kingdom of Saul and Jonathan. The transition of royal power to David came with Jonathan's own blessing and even initiative.

Old Testament Texts which Proscribes Homosexuality

This section of the book seeks to understand how God proscribed homosexuality in Leviticus 18: 22; 20:13.

Socio-Historical Context of the Book of Leviticus

Leviticus is the third book of the Old Testament. More than 50 times it affirms that its contents are God's direct words and revelation to Moses for Israel, which Moses subsequently preserved in written form. Jesus refers to a passage in Leviticus and attributes it to Moses (Mark 1:44).

⁷⁵ Ibid.

The apostle Paul refers to a passage in this book saying, "Moses describes..." (Romans 10:5).⁷⁶

Leviticus was written to instruct the Israelites and their priestly mediators about their access to God by means of atoning blood and to make clear God's standard of holy living for his chosen people.⁷⁷

The recipients of the book of Leviticus are the sons of Israel (Leviticus 1:2; 4:2; 7:23; and 11:2), and Aaron and his descendants (Leviticus 6:9; and 8:2). In view of the fact that the covenant Israel entered into was not just for the Exodus generation, but for all succeeding generations, Moses' wider audience must necessarily include later generations of Israelites as well.⁷⁸

There are no chronological indicators in the Book of Leviticus and so the date of the events in this book must be determined from chronological data given in other books of the Pentateuch. The Book of Leviticus begins with "Then Yahweh called to Moses and spoke to him from within the tent of meeting, saying ... "(1:1). This statement shows strong continuity with the Book of Exodus with *then* connecting the instructions of Leviticus with the closing of Exodus (Exodus 40:34-38). From this perspective, it is known from Exodus 40:7 that the Tabernacle was erected on the first day of the first month of the second year from the Exodus. Further, it is known from the Book of Numbers that Yahweh spoke to Moses in the wilderness of Sinai from the Tent of Meeting on the first day of the second month of the second year (Numbers 1:1).⁷⁹ This would date the giving of the instructions recorded in Leviticus in the first month of the second year from the Exodus, or in the spring of the year 1445 B.C. Thus, it would seem that the giving of the Law

⁷⁶ Donald C. Stamps, *The Full Life Study Bible, NIV*, Grand Rapids: Zondervan, 1992.

⁷⁷ Ibid.

⁷⁸ "Analysis and Synthesis of Leviticus," www.bible.org/seriespage/3-analysis-and-synthesis-leviticus, (31.3.2016).

⁷⁹ Ibid.

recorded in the Book of Leviticus occurred over a one-month period of time.⁸⁰

The socio-cultural aspect of the biblical context for Leviticus does not change from beginning to end as Israel is camped at Mount Sinai for the entire month that this book deals with chronologically. Thus, in effect, the socio-cultural context for Israel is the same as it was at the end of Exodus. However, it was now recognized that the laws for worship and personal and national holiness revealed in Leviticus establishes a unique culture which serves to separate Israel to Yahweh to be for him a kingdom of priests and holy nation. From this point on, this is the dominant aspect of Israel's socio-cultural context by which all the other writings in the Old Testament as well as the Gospels must be understood.⁸¹

God gave the Holiness Code to Israel in order to prepare them to live holy lives in the Promised Land of Canaan, where homosexual practice was prevalent. Hence, the Holiness Code urged all Israelites to keep the Promised Land unpolluted through holy obedience to the commands.⁸² Therefore, the book of Leviticus warns the children of Israel in the wilderness that they should not adopt homosexual practices which were prevalent both in Egypt where they were coming from and Canaan where they were going.

Proscription of Homosexuality in Leviticus 18:22

Leviticus 18:22 says that "with a male you shall not lie (*tish'kav*)⁸³ as though lying with a woman; it is an abomination (*toebah*)."⁸⁴ This text is

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

⁸³ www.lexicon.com/hebrew/7901.html (28.3.2016).

⁸⁴ Ibid.

a reference to the shameful vice of homosexuality.⁸⁵ God calls homosexual sex an "abomination" (*toebah*).⁸⁶

Leviticus 18:22 says: And with a male (*zakar*) you shall not lie, the lying down of a woman (*mishkebe isha*). This text proscribes two things. First, like one who lies with a woman (penetrator, active). Second, like one who lies down as a woman (penetrated, passive).⁸⁷ In other words, the text proscribes homosexuality by all participants: the penetrator and the penetrated.

The lying down of a woman (*mishkebe isha*) is used in this text as a euphemism to specify sexual penetration: first referring to a woman ("the lying down of a woman" meaning the penetration of the penis into the vagina), and second, referring to the prohibition of a male lying down with another male, meaning the penetration of the penis into the anus.⁸⁸

The Hebrew word "*toebah*" means abominable act or abomination, a detestable act, or loathsome or an object of loathing.⁸⁹ The word "*toebah*" also means properly something *disgusting* (morally), that is, (as a noun) abhorrence.⁹⁰ *Toebah* further means an abhorrent thing, or something utterly repugnant, intimating a particularly revolting and conspicuous violation of boundaries established by God against the defiling behaviour characteristic of other peoples.⁹¹

It should be noted that to the Old Testament writers and to God there was no such thing as a "homosexual." This is not a question of whether

⁸⁵ "Coffman's Commentaries on the Bible, Leviticus 18," www.studylight.org (1.2.2016).

⁸⁶ "David Guzik Commentary on the Bible, Leviticus 18," www.studylight.org (1.2.2016).

⁸⁷ www.fundotrasovejas.org.ar (26.3.2016).

⁸⁸ Ibid.

⁸⁹ "NAS Exhaustive Concordance of the Bible with Hebrew-Aramaic and Greek Dictionaries," www.lockman.org (1.4.2016).

⁹⁰ "Strong's Hebrew & Chaldee Dictionary of the Old Testament," www.studylight.org (1.4.2016).

⁹¹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

"God loves homosexuals." This is a question of what actions are wrong.⁹²

Thus, I am of the opinion that Leviticus 18:22 disapproves homosexuality. The degree of revulsion associated with the homosexual act is suggested by the specific attachment of the word *toebah*. The use of the term "abomination" (*toebah*) demonstrates the strength of God's feeling against homosexuality.

Proscription of Homosexuality in Leviticus 20:13

Leviticus 20:13 says that:

And a man who lies with a male as though lying with a woman, they have committed an abomination.

A translation of Leviticus 20:13 is: 'And a man (*ish*) who lies with a male (*zakar*), the lying down of a woman (*mishkebe isha*). This text proscribes two things. First, like one who lies with a woman (penetrator, active). Second, like one who lies down as a woman (penetrated, passive); they did an abomination (*toebah*).⁹³ The text proscribes homosexuality by all participants: the penetrator and the penetrated and attaches the death penalty to the culprits. Again they have brought their blood on their own heads.⁹⁴

The same word *toebah* (abomination) which is used in Leviticus 18:22 is also used in Leviticus 20:13 to describe the abhorrent nature of homosexuality. It means abomination, an abhorrent thing, or something detestable, loathsome, utterly repugnant, and disgusting.⁹⁵

⁹² "Peter Pett's Commentary on the Bible, Leviticus 18," www.studylight.org (16.2.2016).

⁹³ www.fundotrasovejas.org.ar (26.3.2016).

⁹⁴ "Peter Pett's Commentary on the Bible, Leviticus 20," www.studylight.org (16.2.2016).

⁹⁵ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

Thus, I am of the opinion that in Leviticus 20:13 God disapproves homosexuality. It is an abomination before God which attracts the death penalty.

Other Interpretations of Leviticus 18:22 and 20:13

These texts unquestionably prohibit and condemn male homosexual genital activity. The texts have three features which are important for establishing their hermeneutical relevance.

In the concluding summary in Leviticus 18:24-30 all the practices mentioned in the chapter are described as "abominations" (18:26-27; 29-30); yet in the preceding list specific commands in Leviticus 18:6-23 the word are mentioned only in conjunction with same-sex male intercourse. Also, in Leviticus 20 where penalties are prescribed for many of the forbidden acts of Leviticus 18-19, the word is applied specifically only to sexual intercourse between males (20:13). Thus, in the entire Holiness Code, the only forbidden act to which the designation "abomination" is specifically attached is homosexual intercourse.⁹⁶

The laws in Lev 18:22 and 20:13 are unqualified and absolute. They neither penalize only oppressive forms of homosexuality nor excuse either party to the act. The general term "male" (*zakar*) is used, not "your neighbour" (*reaka*, one of equal status or from the same region or clan) or "boy, youth" (*naar*). Therefore, the question of whether the homosexual relationship is pederasty or not does not enter into the picture. The prohibition applies not only to the Israelite but also to the non-Israelite who lives among God's people (18:26).⁹⁷

Contrary to the contemporary trend of Jewish and Christian communities to accommodate to the prevailing cultural approbation of homosexuality, the entire context of the Holiness Code stresses the distinctive holiness of the people of God. God's people are to imitate the holiness and purity of their God and not the abominable and defiling practices of other peoples (18:1-5, 24-30; 19:2). Therefore, the commands of God,

⁹⁶ Ibid.

⁹⁷ Ibid.

and not the consensus of the surrounding culture, must shape the behaviour of God's people.⁹⁸

Punishment for Homosexuality in Leviticus 18:22; 20:13

God gave an extreme punishment for homosexuality which is death (20:13). Death (*mooth*) means to die, to kill, to have one executed, to die as a penalty, be put to death, and to die prematurely by neglect of wise moral conduct.⁹⁹ Thus, homosexual conduct was not merely prohibited but also regarded as a supreme offense, a penalty consistent with its description as an "abomination." In Leviticus 18:29 homosexual intercourse is listed along with other forbidden sexual acts for which a person should be "cut off (*karath*) from their people."¹⁰⁰ The Hebrew word '*karath*' means to cut, cut off, cut down, cut off a body part, cut out, eliminate, to kill, cut a covenant, to destroy, and to permit to perish.¹⁰¹

The failure on the community's part to take action against offenders would lead to expulsion of the whole community from the land of Canaan, just as the previous inhabitants had been expelled for such practices (18:24-30).¹⁰²

Therefore, I argue that the extreme punishments given to homosexuality in the Levitical laws is a clear indication that homosexuality is disapproved in the Torah.

⁹⁸ Ibid.

⁹⁹ "Brown-Driver-Briggs (Old Testament Hebrew-English Lexicon)," www.study-light.org, (1.4.2016).

¹⁰⁰ www.lexicon.com/hebrew/7901. Html (28.3.2016).

¹⁰¹ "Brown-Driver-Briggs (Old Testament Hebrew-English Lexicon)," www.study-light.org, (1.4.2016).

¹⁰² Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

Implementation of God's Punishment for Homosexuality in the Old Testament

The implementation of God's punishment for homosexuality, which is death, can be seen in the story of the destruction of Sodom and Gomorrah (Genesis 19:24-25) and the punishment that the other tribes of Israel inflicted on Gibeans who were the men of Benjamin (Judges 19:26-20:1-48).

Punishment of Homosexuals in Sodom and Gomorrah

This study argues that the story of Sodom and Gomorrah exemplifies God's punishment for homosexuality.

Social Historical Context of Sodom and Gomorrah

The cities of Sodom and Gomorrah are mentioned in the book of Genesis,¹⁰³ throughout the Old Testament and in the New Testament.¹⁰⁴ The cities of Sodom and Gomorrah were allied with the cities of Admah, Zeboim, and Bela. These five cities, also known as the "cities of the plain", were situated on the Jordan River plain in the southern region of the land of Canaan. The plain, which corresponds to the area just north of the modern-day Dead sea, was compared to the garden of Eden as being a land well-watered and green, suitable for grazing livestock (Genesis 13:10).¹⁰⁵

Sodom and Gomorrah were part of a metropolis assumed to have been located on the eastern bank of the Dead Sea consisting of five cities, each with its own king. There was (1) Bera, king of Sodom, (2) Birsha, king of Gomorrah, (3) Shinab, king of Admah, (4) Shember, king of Zeboim, and (5) the king of Bela, which is also called Zoar (Genesis 14:8). This thriving group of city-states is referred to in the Bible as the

¹⁰³ Howard Schwartz, Caren Loebel-Fried; Elliot K. Ginsburg, *Tree of Souls: The Mythology of Judaism*, Oxford University Press, 2007.

¹⁰⁴ Bruce Manning Metzger, Michael D. Coogan, *The Oxford Guide to People and Places of the Bible*, Oxford University Press, 2004.

¹⁰⁵ William Smith, "Sodom," www.biblestudytools.com/dictionaries/smiths-bible-dicti/ (28.3.2016).

Cities of the Plain (Genesis 13:12). The five kings were under the dominion of a coalition of eastern Mesopotamian overlords. According to the Torah, with the help of the patriarch Abraham, the cities gained their independence, though their independence was only short-lived. A few years later, God destroyed the cities in a hail of fire and brimstone.¹⁰⁶

The Midrash describes the metropolis as a thriving population and the enormous number of burials in the large cemeteries attests to a great population.¹⁰⁷ The Talmud and the Midrash describe the area as an agricultural land. The great diversity of agricultural products found in the ruins verifies the lush produce enjoyed by the area's inhabitants.¹⁰⁸

Homosexual Acts in Sodom and Gomorrah (Genesis 19:1-11, 24-25)

They called to Lot, "where are the men who came to you tonight? Bring them out to us so that we can have sex with them." Lot went outside to meet them and shut the door behind him and said, "No, my friends. Don't do this wicked thing. Look, I have two daughters who have never slept with a man. Let me bring them out to you, and you can do what you like with them. But don't do anything to these men, for they have come under the protection of my roof." "Get out of our way," they replied. And they said, "This fellow came here as an alien, and now he wants to play the judge! We'll treat you worse than them." They kept bringing pressure on Lot and moved forward to break down the door. But the men inside reached out and pulled Lot back into the house and shut the door. Then they struck the men who were at the door of the house, young and old, with blindness so that they could not find the door.

Genesis 19:1-3 gives us the introduction of the story. The two visitors who had previously visited Abraham in Genesis 18:22 came to Sodom. They are identified as angels. They find Lot sitting at the gate of Sodom indicating that he was a civic leader. The gate area of an ancient city was

¹⁰⁶ www.aish.com/ci/sam/48931527.html (28.3.2016).

¹⁰⁷ sacred-texts.com/jud/tmm/index.htm (28.3.2016).

¹⁰⁸ www.jewishencyclopedia.com/articles/14213-talmud, (28.3.2016).

sort of a town-hall, where the important men of the city judged disputes, conferred with one another, and supervised those who entered and left the city.¹⁰⁹

Lot convinced the angelic visitors to stay with him in his house with the same respectful civility as Abraham had shown them before. And this seems the more probable, as the rites of hospitality were so sacred, and the virtue deemed so important in the first ages; when, there being no public inns, unless a stranger came among hospitable people, he must have lodged in the street all night.¹¹⁰

Genesis 19:4-5 demonstrates the wickedness and depravity of the men of Sodom.

The men of this city, being informed of the arrival of these strangers (who probably were of a very beautiful appearance) flocked from all quarters of the town, numbers of every age, with the most infamous purpose, shocking to relate or think of.¹¹¹

Genesis 19:5 "That we may know them (*w'ned'ah otam*)."¹¹² The Hebrew word "*yada*" (know) used here in the Hebrew language is a euphemism for homosexual intercourse.¹¹³ Thus, the sin of the men of Sodom is plainly connected to their homosexuality, a mark of their depravity that they seek pleasure in the violation of nature.¹¹⁴

Genesis 19:6-9 presents Lot's bargain with the men of Sodom not to homosexually harass his guests because hospitality was considered a sacred duty and imposed upon a host the obligation of protecting the

¹⁰⁹ "David Guzik Commentary on the Bible, Genesis 19," www.studylight.org (16.2.2016).

¹¹⁰ "Thomas Coke Commentary on the Holy Bible, Genesis 19," www.studylight.org, (16.2.2016).

¹¹¹ Ibid.

¹¹² www.qbible.com/hebrew-old-testament/genesis19.html\1, (16.2.2016).

¹¹³ "Coffman's Commentaries on the Bible, Genesis 19," www.studylight.org, (16.2.2016).

¹¹⁴ "Lange's Commentary on the Holy Scriptures: Critical, Doctrinal, and Homiletical, Genesis 19," www.studylight.org, (16.2.2016).

lives of his guests at all costs.¹¹⁵ However, Lot's proposal to offer his daughters in verse 8 is highly blamable and regrettable since it demeans both the dignity and status of women in antiquity.¹¹⁶ The use of the Hebrew word "*yada*" in this context clearly suggests that it means that his daughters did not have sexual relations with a man.¹¹⁷ Lot implored the men of Sodom and Gomorrah never to act wickedly (*nebala*) to the visitors. "*Nebala*" means senseless, foolishness, disgrace, disgraceful folly (especially sin of unchastity).¹¹⁸

Therefore, I am of the opinion that the word "*yada*" (know) as used in both verses 5 and 8 should be understood to refer to sexual intercourse rather than merely getting acquainted with someone.

The Punishment of Homosexuality in the Story of Sodom and Gomorrah

The punishment for homosexuality in the narrative of Sodom and Gomorrah is twofold. First, Genesis 19:10-11 relates the punishment of blindness which the angelic visitors inflicted upon the men of Sodom and Gomorrah. They smote the people with blindness, which disabled them from finding Lot's door.¹¹⁹ The Hebrew word translated as smote is "*nakah*," literally meaning "good for nothing," that is something bad physically, socially, or morally.¹²⁰ The Hebrew word translated with blindness is "*bacanweeriym*," a plural word, meaning-with temporary blindness; a hallucination, derived from a Chaldaic root, "to

¹¹⁵ "Commentary Critical and Explanatory on the Whole Bible – Unabridged, Genesis 19," www.studylight.org (16.2.2016).

¹¹⁶ "Thomas Coke Commentary on the Holy Bible, Genesis 19," www.studylight.org, (16.2.2016).

¹¹⁷ Spiros Zodhiates (ed.), *Hebrew-Greek Key Word Study Bible*, New American Standard Bible, Chattanooga, TN: AMG Publishers, 1984.

¹¹⁸ F. Brown, S. R. Driver, C.A. Briggs, *Hebrew and English Lexicon of the Old Testament*, Oxford, 1907.

¹¹⁹ "Thomas Coke Commentary on the Holy Bible, Genesis 19," www.studylight.org, (16.2.2016).

¹²⁰ www.qbible.com/hebrew-old-testament/genesis19.html\1, (16.4.2016).

dazzle," "glitter" (cf. 2 Kings 6:18).¹²¹ This is the first recorded instance of punishment inflicted by angels.¹²²

Second, Genesis 19:24-25 relates the destruction of Sodom and Gomorrah because of its sin of homosexuality. The Lord rained (*matar*) upon Sodom and Gomorrah brimstone (*Gäf'riyt*) and fire (*wäësh*).¹²³ It was a continuous rain of sulphurous fire and burning flaming brimstone, which at once consumed these cities and their inhabitants.¹²⁴ "Rained" is figuratively used in describing the descent of various objects from above, such as hail (Exodus 9:18-23), manna (Exodus 16:4; Psalms 78:24) and lightning (Psalms 11:6; Ezek. 38:32).¹²⁵

The *Targum Yonathan ben Uziel*¹²⁶ translates the word "*gafrit*" into Aramaic as "*kivraitah*." The term *kivraitah* appears in the Talmud (Babylonian Talmud Shabbos 89b, 90a; Nidah 62a) and is used in the context of a cleaning agent. It is likely that the Biblical "*gafrit*" is the hydrocarbon bitumen, which is the essential ingredient of asphalt. Bitumen can also be distilled into a cleaning agent. Bitumen/asphalt is a naturally occurring, highly flammable substance found in the Dead Sea area.¹²⁷ In fact, Josephus refers to the Dead Sea as Lake Asphaltites.¹²⁸ It is of interest to note that Josephus writes that the Lake Asphaltites was formed as a result of the devastation that destroyed Sodom and Gomorrah.¹²⁹

¹²¹ "Friedrich Wilhelm Gesenius, Hebrew and Chaldee Lexicon," www.tyndalearchive.com/tabs/Gesenius/, (16.4.2016).

¹²² Commentary Critical and Explanatory on the Whole Bible – Unabridged, Genesis 19, www.studylight.org, (16.4.2016).

¹²³ www.qbible.com/hebrew-old-testament/genesis/19.html, (16.4.2016).

¹²⁴ "John Trapp Complete Commentary, Genesis 19," (16.4.2016).

¹²⁵ Commentary Critical and Explanatory on the Whole Bible – Unabridged, Genesis 19, (16.4.2016).

¹²⁶ Avigdor Shinan, "Live Translation: On the Nature of the Aramaic Targums to the Pentateuch," *Prooftexts* (1983), pp. 41-49.

¹²⁷ www.aish.com/ci/sam/48931527.html, (16.4.2016).

¹²⁸ Josephus, *Antiquities*, Book I, chapter 9, www.sacred-texts.com/jud/josephus/ant-20.htm, (16.4.2016).

¹²⁹ *Ibid.*

The word "overthrew" *Yaháfokh*¹³⁰ which is used in verse 25 does not mean submerged, since the agent in the destruction was fire and not water. "The plain" (Heb., the Ciccar) still existed, and when Abraham saw it, was wrapped in smoke (verse 28).¹³¹ These cities are not in the Dead Sea, but their ruins were discovered by M. de Saulcy, about 4 miles square, at modern day Kharbet-Goumran.¹³²

I am of the opinion that in the story of Sodom and Gomorrah God disapproves homosexuality and further indicates its abhorrent character in God's eyes leading to the total destruction of these two cities.

The Interpretations of Philo and Josephus on the Sin of Sodom and Gomorrah

Philo and Josephus, two most prominent Jewish writers, interpreted Gen 19:4-11 to refer explicitly to homosexual acts.¹³³ They were guided by Greek conceptions in understanding the story of Sodom and Gomorrah, because in the Hellenistic age, sexual aspects were observed in the sin of Sodom.¹³⁴ In their interpretations of the Sodom story, the cultural effect of Hellenism cannot be mistaken. Within the Hellenistic cultural understanding where the beauty of boys was central in understanding same-sex practices, the story of Sodom had to be realigned to this cultural conception.¹³⁵ Josephus portrayed the two companions as handsome young men when he writes; "But the Sodomites on seeing these young men of remarkably fair appearance whom Lot had taken under his roof, were bent only on violence and outrage to their youthful beauty."¹³⁶ This explains why the guests of Lot have to be young in

¹³⁰ www.lexiconconcordance.co/hebrew/9007.html (28.3.2016).

¹³¹ "Ellicott's Commentary for English Readers, Genesis 19," www.studydrive.org, (16.4.2016).

¹³² "E.W. Bullinger's Companion Bible Notes, Genesis 19," www.studydrive.org, (16.3.2016).

¹³³ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

¹³⁴ Martti Nissinen, *Homoeroticism in the Biblical World: A Historical Perspective*, Minneapolis: Fortress Press, 1998.

¹³⁵ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹³⁶ Josephus, *Antiquities* 1:199 available online: www.perseus.tufts.edu, (3.3.2014).

Josephus' understanding, even though the biblical text makes no such mention of their ages. While tampering with the ages, Josephus captures the central concern of the Sodom story as the attempt to violently humiliate the guests through homosexual rape.¹³⁷

Philo interpreted the Sodom story within the broader framework of reproduction. Philo is essentially a pro-creationist and sexual intercourse is only natural if it is meant to procreate. On the Sodom story, he writes:

The Sodomites threw off from their necks the law of nature [...] not only in their mad lust for women did they violate the marriages of their neighbours, but also men mounted males without respect for the sex nature which the active partner shares with the passive, and so when they tried to beget children they were discovered to be incapable of any but a sterile seed.¹³⁸

Thus, Josephus and Philo understood the story of Sodom and Gomorrah to be disapproving of homosexual practice.

Punishment of Homosexual Gibeans (Judges 19:26-20:1-48)

The Gibeans who wanted to have homosexual relations with a Levite were Israelites. The expression in Judges 20:11 that: "All the men of Israel were gathered together as one man" refers to the perfect national unity and unanimity that Israel sought in order to deal with the tribe of Benjamin. The expression also refers to the Israelite army of forty thousand foot soldiers, which initiated an effort to induce Benjamin to surrender the guilty, before fighting them in a war.¹³⁹

Judges 20:48 explains the extreme punishment that the tribes of Israel inflicted on the tribe of Benjamin. It says:

¹³⁷ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹³⁸ "Philo, On Abraham 133-141, Translated by F. H. Colson, Harvard (1954)," www.well.com, (3.3.2014).

¹³⁹ "Lange's Commentary on the Holy Scriptures: Critical, Doctrinal, and Homiletical, Judges 20," www.studylight.org, (21.4.2016).

And the men of Israel turned again on the children of Benjamin, and smote them with the edge of the sword, both the entire city and the cattle and all that they found. Moreover all the cities that they found they burned with fire.

The tribes of Israel inflicted the dreadful punishment on the tribe of Benjamin by totally destroying everything and exterminating every living Benjamite because they had wrought folly in Israel. Thus, from city to city they went, killing with their swords every living person, old men, women and children, and then destroying all domestic beasts and every possession. The cities were burned to the ground. Nothing was to be left. Seemingly it took about four months (Judges 20:47).¹⁴⁰

I am of the view that this punishment is consistent with God's punishment for homosexuality which is given in the Holiness Code. The punishment is in two forms: (1) the homosexual offender should be "cut off from their people" (Leviticus 18:29) and should face the death penalty (Leviticus 20:13).

Conclusion

In conclusion, I am of the view that the OT Scriptures are an accurate historical record of God's dealings with his people in the past. The OT Scriptures provide a reliable guide in morals and ethics which condemns homosexuality. There is not a single piece of evidence anywhere in the OT that even hints at a favourable attitude toward any kind of homosexual relationship. All the primary OT texts on homosexuality never condone it but condemn it as an infringement of covenant morality.

The clear and unequivocal position of the OT Scriptures against homosexual intercourse provides an important framework for discussing the New Testament's texts on homosexuality.

¹⁴⁰ "Peter Pett's Commentary on the Bible, Judges 20," www.studylight.org, (21.4.2016).

The New Testament and Homosexuality

This section of the book will present a discussion on the New Testament and homosexuality. The New Testament has at least three key texts which explicitly deal with homosexuality. These are: Romans 1:24-27; 1 Corinthians 6:9 and 1 Timothy 1:10. The discussion of the NT texts on homosexuality will be preceded by a discussion of homosexuality in the Greco-Roman world because the texts describe homosexuality in the cities of Rome, Corinth, and Ephesus which were in the Greco-Roman world. The Romans ruled Palestine during the time of Jesus Christ but the official language used in the Eastern Roman Empire was Greek.¹⁴¹ That is why I refer to this area as the Greco-Roman world.

Homosexuality in the Ancient Greco-Roman World

The historical background of the Ancient Greco-Roman world provides a framework for analyzing the New Testament's understanding of homosexuality. Paul's statements on same-sex practices are an indirect attack on the manifestation of homosexuality throughout the Roman Empire, whose manifestation was also well-known in Christian communities in Rome, Corinth and Ephesus.¹⁴²

The Greek and Roman understandings of homosexuality show some commonalities. For instance, the basic structure of homoeroticism required an active and a passive partner, yet critically for a free Roman citizen the passive role was shameful, as it involved the loss of one's manly honour.¹⁴³ Both societies saw a direct connection between social status and sexual role. The free citizens could not take the passive role and retain their manly honour. It should be emphasized that in Rome sexual relations between adult citizens were prohibited much in the same way that ancient Greece also frowned on such relations. However,

¹⁴¹ Luke T. Johnson, *The Writings of the New Testament: An Interpretation*, Philadelphia: Fortress Press, 1986.

¹⁴² Ragies Masiwa Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹⁴³ Martti Nissinen, *Homoeroticism in the Biblical World: A Historical Perspective*, Minneapolis: Fortress Press, 1998.

among the Romans the only acceptable manifestation of same-sex practices was that of involving a master and his slave. Also, the Roman same-sex practices did not classify participants on the basis of age but according to their social status.¹⁴⁴

The New Testament is a product of the Hellenistic world, a world that came into being as a consequence of the conquests of Alexander the Great (356-323 B.C.E). When Philip II of Macedonia (northern Greece) was assassinated in 336, his brilliant and ambitious son, Alexander, only 20 years old, consolidated his power and then launched a campaign east-ward. He gained mastery over the far-flung Persian Empire that extended from western Asia Minor (modern Turkey) to India, and included Egypt. Alexander's first major victory over the Persian king and general Darius III took place at Issus in south-eastern Asia Minor in 333 B.C.E. The young commander then moved down the eastern Mediterranean coast, overcame resistance at Tyre and Gaza (332), induced submission of the Jews of Palestine and was welcomed in Egypt as a conquering hero.¹⁴⁵

Lesbianism in Greece

Sappho, from the island of Lesbos, is a well-known name in Greek antiquity to be associated with homosexual activity. She was a poetess from Mytilene. She spent her childhood in exile in Sicily. Later, she returned to Mytilene where she worked in a girl's school which honoured Aphrodite and the Muses. She was married and had a child called Cleis. Sappho is remembered for writing honest accounts of her feelings for the school girls and their feelings for each other. She wrote a poem with great feelings of and intimacy to an unmarried girl, a poem which is considered to be inspired since Sappho witnessed the girl's

¹⁴⁴ Louis Crompton, *Homosexuality and Civilization*, Massachusetts: The Belknap Press of Harvard University Press, 2003.

¹⁴⁵ Dr. James Tabor, *The Roman World of Jesus: An Overview*, <https://clas-pages.uncc.edu/james-tabor/the-roman-world-of-jesus...> (18.2.2016).

wedding and saw her standing by the bridegroom. Further, she wrote a number of poems to her girls in celebration of their weddings.¹⁴⁶

Consequently, Sappho and her school have become a symbol and name for homosexual activity among women, lesbianism, which is taken from the Island of Lesbos. Thus, "lesbian" in modern terminology and literature does not identify an inhabitant of Lesbos but exclusively refers to a homosexual woman.¹⁴⁷

The Development of Pederasty (Love of Boys) in Classical Greece

Homosexuality in classical Greece is almost always associated with the institution of pederasty or the love of boys. Pederasty refers to a plan of education for boys in which their fathers placed them under the care of another man to be trained. At times, the boy was expected to provide his mentor with homosexual favours.¹⁴⁸

The Greeks themselves were divided in their understanding of the origin of pederasty. Herodotus, a widely travelled Greek historian, born in ca 484 B.C. assumed that the Persians had learned it from the Greeks.¹⁴⁹ Whereas, Plutarch of Chaeronea, a philosopher and bibliographer writing in the Hellenistic period (ca AD 120), traces the practice to Persia.¹⁵⁰ It is possible that these two authors are referring to quite different things under the same name.

In Athens pederasty already was deeply imbedded in the social structure by Solon's time (600 B.C.). Solon was an Athenian statesman and poet. Generally it was felt to be an honourable institution. Solon

¹⁴⁶ Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Herodotus, *The Histories*, Book 1, p. 135, [www.perseus.tufts.edu/hopper/text?doc=Perseus:text \(22.4.2016\)](http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text (22.4.2016)).

¹⁵⁰ Plutarch, *On the Malice of Herodotus*, p. 13, [ebooks.adelaide.edu.au/p/Plutarch/essays/chapter14.html \(4.6.2014\)](http://ebooks.adelaide.edu.au/p/Plutarch/essays/chapter14.html (4.6.2014)).

produced legislative regulations which show that by that time boy-love was customary for Athenians.¹⁵¹

Insights from classical Greek pederasty reveal that early Greek homosexuality was considered a strictly controlled convention rather than a natural and uncontrolled condition. Legal regulations stipulated that slaves could not traffic with freeborn, nor could a young man sell himself for money. However, this was no great barrier to the practice of homosexuality since it was generally accepted that anything mutually agreeable was excusable. Also, as time passed, this law fell into a dormant state. Foreigners and slaves were not affected by this law, but no freeborn Athenian or any Athenian citizen, was to sell himself. Those who made a living from homosexual prostitution would be predominantly non-Athenians since foreigners were considered to be of less worth than citizens.¹⁵²

The adult Greek male who indulged in a homosexual relationship was expected to have that relationship with a young boy up to the age of puberty. The boy was not expected to enjoy the erotic aspect of the relationship, but merely endure it for the sake of, and out of respect for the older male.¹⁵³ If the boy sought bodily pleasure from the experience, he incurred disapproval as a prostitute or a pervert.¹⁵⁴

What the older male stimulated in the boy was not love primarily in a physical sense (eros) but a kind of love inspired by admiration and gratitude toward the older male (philia). Such gratitude coupled with compassion would induce the boy to grant favours and perform the services which the older male desired. In public the behaviour of the two was expected to be well-behaved and cautious.¹⁵⁵

¹⁵¹ Matwetwe K.N. Nyarenchi, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

Pederasty or the love of boys in classical Greek was also practiced in the gymnasium. The gymnasium was a center for training the youth in academics, physical and military discipline. It became either famous or infamous for pederasty. "Here young men came to exercise in the nude and older men came to look at them and sometimes to seduce them."¹⁵⁶ Society frowned upon this ogling and peeping at boys merely with a view to seducing them. True *erastes* had the boy's physical and mental welfare in mind as well as the emotional and erotic aspects of the relationship. Once the young lad had come of age, he was not to submit himself homosexually to any man as a passive partner. If a young Greek citizen did so, he made himself liable to charges of homosexual submission.¹⁵⁷

In a nutshell, pederasty developed along two lines. First, a more refined version practiced among intellectuals whose affection for boys led older men to care for and train them. Sometimes this involved a sensual element but it was supposed to be a controlled and elevated relationship that took the boys' interests into consideration. Second, pederasty went towards the direction of sensualism, licentiousness, exploitation, and prostitution.

Homosexuality in the Roman Empire

The death of Alexander the Great in 323 B.C.E. led to a bitter political power struggle among his Macedonian generals. This led to the decline of the Hellenistic empire and occasioned the rise of the Roman Empire which gained control over the Hellenistic empires surrounding the eastern Mediterranean Sea. Although Rome was unable to extend her control as far eastward as Persia, the western part of the empire eventually took in Spain, Gaul (modern France), southern Germany, and southern Britain. Each of the Hellenistic empires was subdivided into Roman provinces in the second and first centuries B.C.E. The formation of Syria

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

as a Roman province brought Palestine under Roman control in 63 B.C.E.¹⁵⁸

Whilst Greek culture was dominant in the Ancient Near East during the New Testament period, it is obvious that sources from Republican and early imperial Rome are both historically and culturally closer to the New Testament and other sources of the Early Church than are Greek documents from the classical age.¹⁵⁹ A possibility exists that the NT texts are responding to manifestations of homosexuality in the Roman Empire; notwithstanding, the fact that many scholars have drawn parallels between the biblical texts and pederasty, which was a classical Greek manifestation of homosexuality. Moreover, scholars have highlighted the idea that of the first fifteen Roman emperors, only Claudius led an exclusively heterosexual life.¹⁶⁰ This fact alone clearly attests to the prevalence of homosexuality in the Roman Empire, at least at the level of the political and social elites. It is also possible that Paul and other Early Church leaders responded to Roman same-sex practices which were finding expressions within these early Christian communities.¹⁶¹

Differences between Greek and Roman Notions of Homosexuality

A clear distinction can be established between Greek and Roman notions of homosexual practices. For instance, Roman same-sex relationships were normally between free citizens and prostitutes or slaves something that Greeks considered ungentlemanly. Therefore, while pederasty was pedagogical in its Greek cultural understanding, Roman

¹⁵⁸ Dr. James Tabor, The Roman World of Jesus: An Overview, <https://clas-pages.uncc.edu/james-tabor/the-roman-world-of-jesus...> (18.2.2016).

¹⁵⁹ Nissinen Martti, *Homoeotericism in the Biblical World: A Historical Perspective*, Minneapolis: Fortress Press, 1998.

¹⁶⁰ John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian era to the 14th Century*, Chicago: The University of Chicago Press, 1980.

¹⁶¹ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

same-sex practices were driven by the desire to dominate and were characterized by aggression.¹⁶² Louis Crompton expresses similar views:

The Greeks were able to conceive of love between an older and a younger male as a protective and affectionate mentorship, while the Romans, generally speaking, did not accord this privileged status to male relationships [...] for the Romans, homosexual relations were not in themselves good or bad. But to submit to penetration was to be feminized and humiliated.¹⁶³

While ancient Greece attached some value to their model of pederasty because of its pedagogical nature, Romans only counted the victories for the penetrator, hence the idea that "Caesar conquered Gaul; Nicomedes, Caesar" and that Caesar was the "Queen of Bithynia" because he had been conquered by Nicomedes.¹⁶⁴ Being penetrated among the Romans was shameful and could hinder one's progress in the social ladder. The penetrators were conquerors and soldiers used it as a way of humiliating defeated peoples. There was nothing but the desire to express social precedence in every given situation.¹⁶⁵ The aggressive position carried no stigma. The Romans were only bothered by the assumption of the female role in homosexual intercourse. It was disgraceful for a Roman citizen to act as the passive instrument for another's pleasure.¹⁶⁶ The passive receptor in homosexual intercourse was disdained in society: "to let oneself be buggered by one's own slave is not right. It is an assault on one's person and leads to one being despised by your own slave."¹⁶⁷

¹⁶² Ibid.

¹⁶³ Louis Crompton, *Homosexuality and Civilization*, Massachusetts: The Belknap Press, 2003.

¹⁶⁴ John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the 14th Century*, The University of Chicago Press, 1980.

¹⁶⁵ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹⁶⁶ Matwetwe K.N. Nyacherechi, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

¹⁶⁷ A. Richlin, *The Garden of Priapus: Sexuality and Aggression in Roman Humor*, New Haven, CT: Yale University Press, 1983.

The Roman understanding of same-sex practices emphasized more the physical and sexual dimension, completely ignoring the pedagogical goal of Greek pederasty. Martii Nissinen says: "The Roman ideal of masculinity involved aggression which manifested itself in the subordination of slaves to the passive sexual role."¹⁶⁸ If Greek freemen had to charm freeborn youths into same-sex relations in which education rather than penetration was the central concern, Roman freemen had to subjugate their slaves and male prostitutes to demonstrate their power and dominance, and these were understood as "conquests." While the Greeks incorporated love (*eros*) in *paederastia*, *erastes*, *eromenos*, the Roman terms such as *pathici*, *cinaedi*, and *exoleti* are terms suggestive of passivity, degradation, and abuse.¹⁶⁹ On the basis of the Roman conception of same sex practices, it is possible that the *arsenokoitai* of Paul referred to men who not only had sexual relations with other men but possibly men who also engaged in some sexually exploitative ventures. These men did everything in pursuit of the power of precedence and sought to humiliate others in the process. They were not fit for the community Paul had in mind, a community of equals.¹⁷⁰

The Roman *mollis* and *cinaedi*, widely believed to be referring to the same person designated *malakoi* in Greek are essentially highlighting the existence of some men who failed to meet the standards of "real" masculinity, particularly, men who enjoyed being penetrated by other men. Among the Romans, some men were effeminate or "soft" and some rebranded themselves as women. This was a public scandal because men could not aspire to become women, aspiring to be lesser beings. The *mollis* and the *cinaedus* are guilty of the voluntary abandonment of a "masculine" identity in favour of a "feminine" one. Such men are compared to the "*tribades*," women who pursue women with an almost masculine jealousy.¹⁷¹ Moreover, these appear to be the closest we get to identify the "*malakos*" of Paul. Since among the Romans,

¹⁶⁸ Martti Nissinen, *Homoeroticism in the Biblical World: A Historical Perspective*, 1998.

¹⁶⁹ Louis Crompton, *Homosexuality and Civilization*, 2003.

¹⁷⁰ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹⁷¹ David M Halpern, *One Hundred Years of Homosexuality and other Essays on Greek Love*, New York: Routledge, 1990.

social status and sexual role rather than age distinguished acceptable and unacceptable same-sex practices, it would appear that Paul is responding more to the manifestation of brutal Roman homosexuality than to pedagogical Greek pederasty.¹⁷² In this case, both male and female homosexual practices are labelled unnatural because they violate gender boundaries, especially from a Jewish background in which licit sexual intercourse clearly identifies women as the only acceptable passive partner. Paul's condemnation of female same-sex practices responds to the existence of Christian tribades.¹⁷³

Homosexuality in Roman Literature

Romans conceived the practice of feminization through castration by equating eunuchism and homosexuality with eastern religious cults. For instance, the temple of Cybele had the eunuch priests, the Galli.¹⁷⁴ The eunuch priests of Cybele were passive homosexuals with insatiable appetites for sexual gratification, who would even rape a dinner guest. This is significant in itself, for Roman invective assumed that there was only one kind of male homosexual, namely, "*pathic*" (those who were anally penetrated). These are frequently called *effeminatus*. Besides speaking of a man as *pathicus* or *effeminatus*, he might be called "*mollis*" (soft), or any of the dozen or more adjectives connoting weakness or delicacy.¹⁷⁵

This effeminacy is in direct contrast with the classical Greek masculine ideal.

"While the Greeks were charmed by the masculinity of their favourites and looked upon their passion as an opportunity to better the condition of the beloved, it was necessary for Nero to remove the clearest evidence of masculinity in Sporus, to feminize him and degrade rather than elevate him. Such cruel and

¹⁷² Robin Scroggs, *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, Philadelphia: Fortress Press, 1983.

¹⁷³ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹⁷⁴ A. Karlen, *Sexuality and Homosexuality. A New View*, New York: WW. Norton, 1971.

¹⁷⁵ Matwetwe K.N. Nyacherechi, "A Theological and Ethical Assessment of Homosexuality in the East African Context: A Seventh Day Adventist Perspective," 2004.

eccentric acts were not at all uncommon among the Romans, but had virtually no precedent in the history of the Greeks."¹⁷⁶

The word "*pathic*" denoted three kinds of behaviour: (1) a boy who was previously penetrated by an older man; (2) an adult who continued to enjoy being penetrated anally by other men, and (3) enjoying fellatio or oral sex. In Rome as in Greece, a man seeking to discredit another could do so by claiming that he had been or still was sexually passive. Sexual intercourse with young slave-boys was regarded not only socially acceptable but also normal, whereas sexual intercourse with free-born boys was shameful and illegal, no doubt out of consideration for the boy's pride and future reputation.¹⁷⁷

I am of the opinion that Paul in his letters is responding to manifestations of homosexuality in the Greco-Roman world. Therefore, having presented the background of homosexuality in the Greco-Roman world, we will now present a discussion of the New Testament texts on homosexuality.

Homosexuality in the City of Rome (Romans 1:18-32)

Romans 1:18-32 is the first New Testament text that mentions homosexuality.

Socio-historical Context of the City of Rome

The socio-historical context of the text suggests that Paul is writing for the Christian community in Rome rather than the entire Roman Empire. The critical question for this section is: "How specific is Romans to what is going on in the Roman Christian community?"¹⁷⁸ This section seeks to highlight the circumstances that led Paul to address the Romans and how these circumstances also occasioned the noting of same-sex prac-

¹⁷⁶ W. Churchill, *Homosexual Behaviour among Male: A Cross-Cultural and Cross-Species Investigation*, Englewood Cliffs, NJ: Prentice Hall, 1971.

¹⁷⁷ Ibid.

¹⁷⁸ Kieran J. O'Mahony, *Imagining a Roman Audience*, Sheffield: Sheffield Academic Press, 2003.

tices for condemnation. Furthermore, the letter has clear manifestations of homosexuality it condemns, which are consistent with what was happening in the city of Rome at that time.¹⁷⁹

Paul's letter to the Romans targets both Christian Gentiles and Jews. There were many Jews who lived in the diaspora, including Rome, the capital of the Roman Empire. Some of these Jews were the earliest converts of Christianity outside Palestine. There were about 40,000 to 50,000 Jews in Rome in the 1st century BCE. It can be assumed that the Jews who believed in Jesus converted their fellow Jews in other cities of the Roman Empire like Damascus and Antioch some came to Rome, a promising missionary field.¹⁸⁰ Aquila and Priscilla, a couple, are a clear example of Jews who resided in Rome and who already were converts by the time they met Paul. Like the communities founded by Paul, the Roman Christians were faced with internal strife caused by the multiplicity of interpretations of what constituted true and faithful Christians. The Roman Christians found their community divided into factions all professing to be the faithful and having the correct interpretation.¹⁸¹

Paul was not a bishop of Rome, nor did he bring Christianity to Rome since there were already Christians in Rome when he arrived there (Acts 28:14-15). Also, Paul wrote his letter to the church at Rome before he had visited Rome (Romans 1:1, 7, 11-13; 15:23-29). Paul only played a supporting part in the life of the church in Rome.¹⁸²

Paul's purpose for writing Romans is twofold: (1) since the Romans apparently received distorted rumours about Paul's message and theology (3:8; 6:12, 15), he felt it necessary to put in writing the gospel he had been preaching for twenty-five years. (2) He wanted to correct certain problems in the church occurring because of wrong attitudes of

¹⁷⁹ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹⁸⁰ Raymond E. Brown, *An introduction to the New Testament*, New Haven: Yale University Press, 2015.

¹⁸¹ Kieran J. O'Mahony, *Imagining a Roman Audience*, Sheffield Academic Press, 2003.

¹⁸² Greg MacGee "The Origins of the Church at Rome" <https://bible.org/article/origins-church-rome> (21.4.2016).

Jews toward Gentiles (2:1-29; 3:21-39) and Gentiles toward Jews (11:11-32).¹⁸³

The division of this community into liberal and conservative camps clearly follows this Jewish-Gentile divide in the community. The Roman Christian community is at a cultural crossroads where the Jewish culture is pitted against the Hellenistic culture of the Greco-Roman world.¹⁸⁴ While the majority of scholars have identified "justification by faith" as the central concern of Paul in Romans, this book agrees with O'Mahony that the central concern is "the communion of the Gentiles and Jews in the Christian church."¹⁸⁵

It is possible that some among the Christians were involved in same-sex practices? Yes, for the following reasons. First, the letter is addressed to Christians in Rome and deals with issues that are important for Christians.

Second, Christianity was still too insignificant to influence public policy; hence, Paul could not have intended the letter for the larger Roman community. This is also clear in the letter when Paul addresses his intended audience as those called to be saints in Rome (Rom 1:7). These Christians had been exposed to various degrees of same-sex practices in the Empire. Many of them were slaves who would have been at the receiving end of same-sex sexual relations. Others were freedmen and freedwomen, who as former slaves would have been in the same situation as with current slaves. It is also possible that some were

¹⁸³ Donald Stamps, *The Full Life Study Bible, NIV*, 1992; Nsengiyumva, Francois-Vincent. "The Pauline Theology of Salvation as Reflected in Romans and it's Implications for the Anglican Church of Rwanda." PhD diss., General Theological Seminary, 1989.

¹⁸⁴ Justin Taylor, "The Original Environment of Christianity" in: Kieran J. O'Mahony (ed.), *Christian Origins: Worship, Belief and Society (Journal for the Study of the New Testament, Supplement Series 241)*; The Milltown Institute and the Irish Biblical Association Millennium Conference, 2003.

¹⁸⁵ Kieran J. O'Mahony, *Imagining a Roman Audience*, Sheffield: *Sheffield Academic Press*, 2003.

masters of their own slaves with whom they also enjoyed sexual rights and privileges like other masters.¹⁸⁶

While Jews had the injunctions in their law against same-sex practices, the Gentiles did not have such condemnation. In fact, there were some manifestations that Romans and Greeks condoned, especially those that remained within the socially accepted limits. If sexual roles were reversed it was degrading only for the citizen, while the slave and other lesser human beings had to live with the humiliation. This is the manifestation of homosexuality that Paul is dealing with, a manifestation that celebrates the humiliation of the slaves, who have now become major stakeholders in this new movement.¹⁸⁷

Paul is firmly standing within the Jewish camp when it comes to sexual behaviour among Christians. Jews generally understood sexual intercourse as only important for the purpose of procreation. While, Jews had scripture, Gentiles did not have scripture, how then were the Gentiles to know? It is at this level that Paul argues on the basis of empirical observations, "Ever since the creation of the world his eternal power and divine nature, invisible though they are, have been understood and seen through the things he has made. So they are without excuse" (Rom 1:20). By suggesting that natural things are empirically observable, Paul assumes that same-sex practices are absent in the animal world.¹⁸⁸ Paul also assumes that what is rare or does not result in tangible results such as children is also unnatural. Paul's condemnation of same-sex practices as unnatural is actually based on an understanding of sexual intercourse as meant for procreation.¹⁸⁹

Paul charges that men and women are "exchanging" their "natural" sexuality for that which is "unnatural." It appears that Romans 1:18-27 speaks of people who deliberately turn their natural sexual orientation upside down by taking an adversary role in it. In other words, Paul refers

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Willard M Swartley, *Homosexuality: Biblical Interpretation and Moral Discernment*, Scottdale, PA: Herald Press, 2003.

to heterosexual people who knowingly and voluntarily make themselves homosexuals.¹⁹⁰ Paul's assumption is that all men must have sexual intercourse with women. This is what is common and therefore, from Paul's understanding, it is natural. He does not reject "sex for pleasure" but at least it should follow the common pairings, that is, male and female.¹⁹¹

In reaching his verdict, Paul knows the general ideology behind same-sex practices in the Roman Empire and understands only too well that they are degrading even for unconverted slaves who remain in this Roman world. The message of Christ is a proclamation of liberty but engaging in humiliating same-sex practices is a rush back to servitude instead of liberty. Paul argues that those who are practicing homosexuality are now under the spell of their own "shameful desires" (Rom 1:26) and have become "subject to the passions of sexuality."¹⁹² The gospel is a message of liberty in place of the yoke of bondage carried by those who rely on the law to secure their acceptance by God. Why should those who have been emancipated by Christ give up their freedom and submit to servitude afresh?¹⁹³

Paul's Condemnation of Homosexuality in the City of Rome

Therefore God gave them over in the sinful desires of their hearts to sexual impurity for the degrading of their bodies with one another. They exchanged the truth of God for a lie, and worshiped and served created things rather than the Creator—who is forever praised. Amen. Because of this, God gave them over to shameful lusts. Even their women exchanged natural relations for unnatural ones. In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed indecent acts with other men,

¹⁹⁰ Martti Nissinen, *Homoeroticism in the Biblical World: A Historical Perspective*, 1998.

¹⁹¹ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

¹⁹² Paul Garrison, *The Greco-Roman Context of Early Christian literature*, Sheffield Academic Press, 1997.

¹⁹³ F.F. Bruce, *The Letter of Paul to the Romans*, Leicester: InterVarsity Press, 1985.

and received in themselves the due penalty for their perversion...
(Romans 1:18-32).

The Greek phrase in Romans 1:26 (*hai...theleiai auton ten physiken chresin eis ten para physin*) can be translated into English as "Their females exchanged natural relations for unnatural ones."¹⁹⁴ The use of '*theleiai*' rather than '*gynaikes*' (women) suggests an allusion to Gen 1:27 (*arsen kai thelu epoisen autous*: "male and female he made them") suggesting a heterosexual gender complementarity of male and female.¹⁹⁵ In other words, the women abandoned the natural use of the male as regards to sexual intercourse and instead preferred to use their fellow women in regard to sexual intercourse.¹⁹⁶ Paul probably alludes, in Romans 1:26 to the debauchery of the "tribades," "the lesbian vice, where women committed same-sex abuses with fellow women. Therefore, Paul condemns lesbianism in this text."¹⁹⁷

The Greek phrase "*eis ten para physin*" in Romans 1:26 can be translated into English as "contrary to nature," "against nature," and "unnatural."¹⁹⁸

The Greek Interlinear Bible translates the phrase in Romans 1:27 "the men also abandoned the natural use of a woman, were inflamed with their yearning for one another, males with males committing indecency..." into Greek as (*Homoios hoi arsenes aphentes ten phusiken chresin tes theleiai exekauthesan en te orexei auton eis allelous arsenes en arsesin ten katergazomenoi aschemosunen*). The phrase "were inflamed" (*exekauthesan*) means "to kindle, light, set on fire, or

¹⁹⁴ Robert Gagnon, *The Bible and Homosexual Practice. Texts and Hermeneutics*, 2001.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ "Lange's Commentary on the Holy Scriptures: Critical, Doctrinal, and Homiletical, Romans 1," www.studylight.org (16.2.2016).

¹⁹⁸ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

burn?"¹⁹⁹ It comes from the verb *ekkaíō* which means to burn out, to set on fire, to inflame with anger or lust.²⁰⁰

The phrase men committed indecent acts in Romans 1:27 as (*katergazomenoi ten aschemosynen*).²⁰¹ The verb "*katergazomenoi*" means "to effect by labour, achieve; work at, practice."²⁰² The noun *aschemosyne* is related to *schema* (form, appearance, bearing, dignity). The *-syne* suffix is added to adjectives (in this case, *aschemon-on*, "misshapen, ugly, unseemingly, shameful, indecorous, indecent). Thus: "want of form, disfigurement; 'bad form,' indecorum, obscene or disgraceful conduct."²⁰³

The next critical questions are: to what extent does the socio-historical world help in elucidating the meaning of the all-important Greek phrase "*para physin*" which means "contrary to nature?"²⁰⁴ Why in this context does Paul label homosexuality as unnatural? One critical understanding of nature is apparent in Paul's arguments against same-sex practices. These conceptions are not at all unique in Paul. First, same-sex practices are unnatural because God created human beings as male and female (Gen 1:26-27, 2:22). The argument of Paul clearly understands this created order to be equivalent to nature (Rom 1:20).²⁰⁵

The Punishment for Homosexuality in Romans 1:24-32

The first punishment for homosexuality is that *God gave them over* (*paredōken autous ho Theos*) (v.24, 26, 28).²⁰⁶ First aorist active indicative of "*paradidōmi*" which means to hand over (beside, — *para*) to

¹⁹⁹ Ibid.

²⁰⁰ "Robertson's Word Pictures in the New Testament, Romans 1," www.studylight.org (16.2.2016).

²⁰¹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

²⁰⁶ "Robertson's Word Pictures in the New Testament, Romans 1," www.studylight.org (16.2.2016).

one's power as in Matthew 4:12. These people had already wilfully deserted God who merely left them to their own self-determination and self-destruction, part of the price of man's moral freedom. Paul refers to this stage and state of man in Acts 17:30 by "overlooked" (*hyperidōn*). The withdrawal of God's restraint sent men deeper down. Three times Paul uses "*paredōken*" here (Romans 1:24, 1:26, 1:28), not three stages in the giving over, but a repetition of the same withdrawal.²⁰⁷

The final punishment of homosexuality is given in Romans 1:32 "that they who do such things, are worthy of death (*thanatos*)."²⁰⁸ Death here means punishment, in the general meaning of that word. It expresses the penalty of the law, and includes all evil inflicted for the satisfaction of justice.²⁰⁹ Death also means the separation of the body and the soul by which life here on earth is ended. In the widest sense, death comprising of all the miseries arising from sin, as well as physical death as the loss of a life consecrated to God and blessed in him on earth, to be followed by wretchedness in hell or a miserable life state of the wicked in hell.²¹⁰

I have observed that death as a NT punishment for homosexuality corresponds with the OT punishment for homosexuality which is expressed in Leviticus 20:13.

Conclusion

I am of the opinion that Romans 1:24-27 disapproves homosexuality. The text does not give a slightest hint of approval for homosexual practice. On the contrary, Paul explicitly singles out homosexual practice by both men and women as sinful and immoral. He also pronounces that God's punishment for all people who practice and approve homosexuality is death.

²⁰⁷ Ibid.

²⁰⁸ Hodge's Commentary on Romans, Ephesians and First Corinthians. "www.studylylight.org/commentaries/hdg/romans-1.html. (28.3.2016).

²⁰⁹ Ibid.

²¹⁰ Strong's Interlinear Bible Search, www.studylylight.org, (28.3.2016).

Homosexuality in the City of Corinth

1 Corinthians 6:9-10 is the second New Testament text that mentions homosexuality. This section of the book analyses this text in order to ascertain its theological and moral meaning. The ancient city of Corinth was located in Southern Greece, about 50 miles from the city of Athens, and about 2 miles south of the narrow isthmus that forms a land bridge between the main landmass of Greece and the Peloponnesus.²¹¹

The Socio-historical Context of the City of Corinth

This text is part of a letter written by Paul to the Christian community at Corinth *ca.* 55/56 CE. Corinth was one of the successful Greek city-state until it was totally destroyed by the Romans in 146 BCE. When it was re-founded a century later as a Roman colony, it speedily regained much of its former greatness owing to its strategic geographical location on the route for East-West trade.²¹² The new Roman Corinth was re-founded as a Roman colony by Julius Caesar in 44 BCE.²¹³ The re-founded city is the same city that was evangelized by Paul. In terms of its population, it was first inhabited by Romans, then Greeks came back in numbers and there were Jews, enough to have a synagogue (Acts 18:4).²¹⁴

Corinth, was in many ways the most prominent Greek metropolis of Paul's time. Like many of today's prosperous cities, Corinth was intellectually arrogant, materially affluent and morally corrupt. Sin of every kind flourished in this notoriously sensual city.²¹⁵

Paul founded the Corinthian church during his eighteen-month ministry at Corinth during his second missionary journey (Acts 18:23-21:16). Paul

²¹¹ David Padfield, "The Biblical city of Corinth," www.davidpadfield.com, (27.5.2016).

²¹² Joseph A. Fitzmyer, *First Corinthians: A New Translation with Introduction and Commentary*, New Haven: Yale University Press, 2008.

²¹³ Ray Pickett, *The Cross in Corinth: The Social Significance of the Death of Jesus*, Vol. 143, A&C Black, 1997.

²¹⁴ Leon Morris, *The First Epistle of Paul to the Corinthians: An Introduction and Commentary*, Grand Rapids, MI: Eerdmans, 1985.

²¹⁵ Donald Stamps, *The Full Life Study Bible, NIV*, Grand Rapids: Zondervan, 1992.

was helped by Priscilla and Aquila (1 Cor 16:19) and his own apostolic team (Acts 18:5) to establish the church in Corinth. The church was composed of a minority of Jews and majority of ex-pagan Gentiles. After Paul left Corinth, a variety of problems arose in the young church requiring his apostolic authority and teaching both by personal visits and written correspondence.²¹⁶

The first letter to the Corinthians was written during his three-year ministry at Ephesus (Acts 20:31) on his third missionary journey (Acts 18:23-21:16). Paul received reports at Ephesus about the problems at Corinth (1 Cor 1:11). Afterwards, a delegation from the Corinthian congregation delivered a letter to Paul (1 Cor 16:17), requesting for his instructions on a variety of issues (1 Cor 7:1; 8:1; 12:1; 16:1). In response to the reports and the letter from Corinth, Paul wrote this letter.²¹⁷

It appears that the reputation of Corinth was recognized by many such that "to become Corinthianized (Gk. *korinthianazesthai*) meant something like to become thoroughly immoral and materialistic."²¹⁸ Corinth apparently became renowned for its pursuit of material riches and sexual immorality. The city of Corinth was known as a city where licentiousness was especially rife.²¹⁹ It is apparent that Paul's gospel was competing with Greek and Roman philosophies and practices and since his movement was just a small minority, the influence of the greater community on this smaller community should not be surprising. But even more challenging was the fact that: "although it is Paul's letters and legacy that survived and became authoritative in the formation of Christianity, other apostles and interpretations of the gospel competed for the attention and loyalty of the earliest believers."²²⁰ To a larger

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Clarence T. Craig & John Short "The First Epistle to the Corinthians; Introduction, Exegesis and Exposition" in: George A. Buttrick et al (eds.), *The Interpreter's Bible, Vol X*, New York: Abingdon Press, 1953.

²¹⁹ Ibid.

²²⁰ Ray Pickett, *The Cross in Corinth: The Social Significance of the Death of Jesus*, London: A & C Black, 1997.

extent, the Corinthian Christian community mirrored the larger Corinthian community in that the inhabitants would have been a hodgepodge of deracinated individuals who had been uprooted from any cultural roots by generations of imperial conquests, enslavement, and migration from the countryside or other cities in search of a livelihood.²²¹

Paul Condemns Homosexuality at Corinth

1 Corinthians 6:9-10 says:

Do you not know the unrighteous will not inherit the kingdom of God? Do not be deceived. Neither the fornicators, nor idolaters, nor adulterers, nor homosexuals, nor sodomites, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners will inherit the kingdom of God.

The first word that refers to homosexuality in 1 Corinthians 6:9 is "*homosexuals*" (*malakoi*),²²² meaning, effeminate men who play the sexual role of females.²²³ It means abusers of themselves with men.²²⁴ It also means self-polluters, of unnatural lusts.²²⁵ It also means men who assume a passive role with other men.²²⁶ The term has also been translated as male prostitutes.²²⁷

²²¹ Richard A. Horsley, "Unearthing a People's History," in: Horsley (ed.) *Christian Origins: A People's History of Christianity*, Minneapolis: Fortress Press, 2005.

²²² Robertson's Word Pictures in the New Testament, 1 Corinthians 6, www.studylight.org (16.2.2016).

²²³ Robert Gagnon, *The Bible and Homosexual Practice. Texts and Hermeneutics*, 2001.

²²⁴ Robertson's Word Pictures in the New Testament, 1 Corinthians 6, www.studylight.org (16.2.2016).

²²⁵ Commentary Critical and Explanatory on the Whole Bible –Unabridged, 1 Corinthians 6, www.studylight.org (16.2.2016).

²²⁶ Bernadette Brooten, *Love between Women: Early Christian Responses to Female Homoeroticism*, University of Chicago Press, 1996.

²²⁷ *New Revised Standard Version, New International Version, and New Living Translation.*

The second word that refers to homosexuality in 1 Corinthians 6:9 is "*Sodomites*" (*arsenokoitai*).²²⁸ "Sodomites" refers to the Old Testament story of homosexuality in the city of Sodom and Gomorrah (Gen 19:1-25) and describes a horrible vice of homosexuality, referred to as the sin of Sodom, which was widely and shamelessly practiced by the Greeks.²²⁹ It also means men who have sex with men,²³⁰ men who have sex with men by assuming the female role in sex.²³¹ It has also been translated as practicing homosexual,²³² homosexual offender,²³³ those who behave like a homosexual,²³⁴ men who are abusers of themselves with mankind or with men,²³⁵ and men who are violators of boys, boy abusers.²³⁶

In the vice list of 1 Corinthians 6:9-10, the term "*malakoi*" which literally means "the soft ones," can be translated as "effeminate males who play the sexual role of females." Also, the term "*arsenokoitai*," which literally means "male-bedders," can be translated as "males who take other males to bed."²³⁷

The Meaning of 'Malakoi' in 1 Corinthians 6:9

The Greek word "*malakoi*" has received a lot of attention in the homosexual debate, because it is a key word that can both advance the cause of homosexuality or impede it. First, I will explore the interpretations of

²²⁸ "Robertson's Word Pictures in the New Testament, 1 Corinthians 6," www.studylight.org (16.2.2016).

²²⁹ "The Expositor's Greek Testament, 1 Corinthians 6," www.studylight.org (16.2.2016).

²³⁰ Bernadette Brooten, *Love between Women*, 1996.

²³¹ Paul Victor Furnish, *The Moral Teaching of Paul: Selected Issues*. Abingdon Press, 2010.

²³² 2. Edition of NAB.

²³³ *New International Version, NEB*

²³⁴ CEV.

²³⁵ KJV, ASV.

²³⁶ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²³⁷ Ibid.

two prominent pro-homosexual advocates: Robin Scroggs and Dale Martin.

Robin Scroggs translates *malakoi* by offering a narrow meaning "effeminate call-boys," referring to the youth who consciously imitated feminine styles and ways and who walked the thin line between passive homosexual activity for pleasure and that for pay.²³⁸ Taking a different tack, Dale Martin contends that in Greek literature "*malakoi*" carries the broad sense of "the effeminate." He goes on to say that in the ancient world, for men, "*malakoi*" can denote such diverse things as a penchant for "soft" or "decadent living," a "fondness for expensive clothes and gourmet foods," "excessive attention to the care of one's hair," "wearing perfume or make up," "gluttony," "too much heterosexual sex," "laziness or aversion to the rigours of a philosopher's life," "cowardice," and "acceptance of phallic penetration by another male." The point is that since the term "*malakoi*" reflects a belief that feminine traits are inferior, it is misogynist and contemporary interpreters should abandon an appeal to what the Bible says here.²³⁹ Scroggs and Martin's intention is to render the word *malakoi* unusable for those who regard all homosexual behaviour as sin. Scroggs shows the word to be too narrow to embrace non-prostituting passive homosexual males while Martin demonstrates that the word is too broad to be taken seriously today. It embraces not only passive homosexual males but also any heterosexual males who display effeminacy.²⁴⁰

Second, I will explore the interpretations of two prominent anti-homosexual advocates: Robert Gagnon and Philo.

Robert Gagnon argues that the meaning of "*malakoi*" in 1 Cor 6:9 probably lies somewhere in between "prostituting passive homosexuals" and "effeminate heterosexual and homosexual males." In this context, it is important to note that Paul places this vice alongside a list of

²³⁸ Robin Scroggs, *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, Philadelphia: Fortress Press, 1983.

²³⁹ Dale B. Martin, "Arsenokoites and Malakos: Meanings and Consequences," *Biblical Ethics and Homosexuality*, (1996).

²⁴⁰ Robert Gagnon, *The Bible and Homosexual Practice. Texts and Hermeneutics*, 2001.

offenses that lead to exclusion from the kingdom. If then, "*malakoi*" refers to a general critique of effeminacy in men, what kind of effeminacy would generate such a serious penalty for a Jew? In 1 Cor 6:9 *malakoi* are sandwiched in between adulterers and "*arsenokoitai*" (people who have something to do with an immoral act of same-sex intercourse). Immoral sexual intercourse, then, would appear to be an identifying mark of the "*malakoi*." Moreover, the epithet "soft" itself suggests males playing the female role in sexual intercourse with other males.²⁴¹

The collective evidence from 1 Cor 6:9-11 and Philo puts to rest the qualifications imposed on the term "*malakoi*" by Martin and Scroggs. Hence, in 1 Cor 6:9, "*malakoi*" should be understood as the passive partners in homosexual intercourse, the most egregious case of which are those who also intentionally engage in a process of feminization to erase further their masculine appearance and manner.²⁴²

Philo twice uses the word "*malakoi*" ("softness, effeminacy," alongside the term "*anadria*," "unmanliness") in his discussion of homosexual behaviour to refer to the behaviour of passive homosexual partners (*hoi paschontes*) who cultivate feminine features. He describes men who braid their hair and who use makeup and excessive perfume in an effort to please their male lovers. Some of these male-females (*androgynoi*) can be seen strutting at the head of festal processions celebrating the mysteries of Demeter. Some of them mutilated their genitals in a desire to be permanently transformed into women. We may assume that some of these cultic functionaries brought in temple revenue as prostitutes. Nevertheless, Philo does not restrict his description of the phenomenon of feminized passive partners to such figures. His critique focuses not on idolatrous associations or the exchange of money but rather on the deliberate effacement of the masculine stamp by these male-females: by allowing themselves to be penetrated as women by

²⁴¹ Ibid.

²⁴² Ibid.

other men and by taking the further step of feminizing their appearance.²⁴³

Besides, Philo describes the men of Sodom by using the word "*malakotes*" ("softness, luxury, and decadence") to denote the whole feminizing process of receptive male partners in homosexual intercourse. Their feminization began with the act of sexual intercourse, irrespective of subsequent effeminate dress and mannerisms: "men mounted males, the doers not standing awe of the (male) nature held in common with those who had it done to them... Then, little by little, by accustoming those who had been born men to put up with feminine things, they equipped them with a female disease... not only feminizing their bodies with "*malakotes*" and daintiness but also bringing their work to completion by making their very souls more degenerate."²⁴⁴

The Meaning of 'Arsenokoitai' in 1 Corinthians 6:9

The second word, "*arsenokoitai*" literally means "bedders of males, those [men] who take [other] males to bed," "men who sleep or lie with males."²⁴⁵ It is a neologism, occurring for the first time in extant literature here in 1 Cor 6:9 and later in 1 Tim 1:10. Does the term refer to anyone who engages in homosexual intercourse as the active partner? Scroggs once more proposes a narrower reading, namely, that "*arsenokoites*" refers to "the active partner who keeps the *malakos* as a

²⁴³ Philo, *Spec. Laws* 3.37-42. www.iep.utm.edu/philo, (6.6.2014).

²⁴⁴ Philo, *Abr*, pp. 135-37 www.iep.utm.edu/philo, (6.6.2014).

²⁴⁵ "Sodomites" is best avoided, both because the Greek word does not incorporate the proper name "Sodom" ("Sodomites" would imply a direct allusion to the story of Sodom whereas *arsenokoites* makes no such allusion) and because the inhabitants of Sodom were guilty of many other evils besides same-sex intercourse. The translation "practicing homosexuals" (NAB) is passable, but does not convey the probable reference to the active partner. "Homosexuals" alone is problematic because the focus of *arsenokoites* is on the act of having sex with other males. Experiencing desires for intercourse with people of the same sex is not in itself sin, though like all impulses it can become sin if such thoughts are embraced and nurtured. In other respects, "homosexuals" is too narrow a translation since it does not encompass heterosexuals or bisexuals who have intercourse with members of the same sex.

"mistress" or who hires him on occasion to satisfy his sexual desires.²⁴⁶ Martin argues for an interpretation which is at once narrow and broad. The word has in view men who exploit other males by means of sex "perhaps but not necessarily by homosexual sex."²⁴⁷ So for him the word does not take in non-exploitative homosexual sex (hence, a narrow interpretation) but it may include exploitative heterosexual intercourse (hence, a broad interpretation).

A broadening of the word "*arsenokoites*" to include exploitative heterosexual intercourse or even a restriction to exclude non-exploitative homosexual intercourse appears unlikely in view of the unqualified nature of the Levitical prohibitions. The word "*arsenokoites*" was probably coined by Hellenistic Jews from a conflation of two Greek words appearing in the Septuagint's rendering of Lev 18:22 and 20:13: "*Meta arsenos ou koimethese koiten gynaiken*" (You shall not lie with a male as with a woman) (18:22); "*hos an koimethe meta arsenos koiten gynaikos*" (If a male lies with a male as with a woman) (20:13). The Greek word for "male" is *arsen* and the word for "bed" or "lying" is "*koite*" (related to the verb *keisthai*, "to lie"), to which it has been attached a masculine personal suffix *-(t)es* denoting the agent or doer of the action ("a man/one who...").²⁴⁸ The rabbis used the phrase *miskab zakur* ("lying of/with a male"), drawn from the Hebrew text of Lev 18:22 and 20:13, to refer to homosexual intercourse.²⁴⁹ It is possible that the Hebrew phrase may have been in circulation prior to Paul's letters, in which case *arsenokoitai* ("homosexual intercourse") and its derivatives would be a straightforward Greek translation. Otherwise, the Hebrew phrase

²⁴⁶ Robin Scroggs, *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, Philadelphia: Fortress Press, 1983.

²⁴⁷ Dale Martin, "Arsenokoites and Malakos: Meanings and Consequences," *Biblical Ethics and Homosexuality: Listening to Scripture*, (1996): 117-136.

²⁴⁸ David Wright, "Homosexuals or Prostitutes?" www.jstor.org/stable/1583059 (6.6.2014).

²⁴⁹ Robin Scroggs, *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, 1983.

represents an independent but parallel development, still corroborating the link between *arsenokoitai* and the Levitical prohibitions.²⁵⁰

The pairing of "*arsenokoitai*" and "*malakoi*" strengthens the argument that it refers to same-sex intercourse. OT prophets frequently compared Israel's idolatry to an adulterous woman. If adultery is paired with idolatry, then "*malakoi*" and "*arsenokoitai*" constitute a pair of sexual sins distinct from adultery. Given such a pairing, the identification of "*malakoi*" with passive homosexual partners confirms the supposition that the term "*arsenokoitai*" refers to the active partners in homosexual intercourse.²⁵¹

Notwithstanding the above arguments, mthis study will understand "*arsenokoitai*" as referring to men who engaged in active roles in same-sex practices. It is possible that some of them may have been involved in slave trade bearing in mind that slaves in both Greek and Roman perspective could be sexually penetrated by their masters and clients. Nothing in this text suggests that this text is pre-emptive, rather it is reactionary meaning Paul here refers to some men who were engaging in same-sex practices and they were part of the Christians at Corinth.

Paul's charge about sexual immorality within the Christian community is important in understanding the sexual conflicts at Corinth (1 Cor 5). It is debatable if such immorality was only limited to the man living in an "incestuous" relationship or that it was widespread as to demand the response of Paul. That some practices possibly not even extolled by the larger community were also finding expression among the Christians is attested to in the attack on women who pray and prophesy in Church without covering their heads, the charge being that these women were rejecting what their culture and community was considered typically feminine. For seeking to undermine their traditional culturally designated categories of masculinity and femininity, the women are reminded of the inviolability of 'divinely ordained' gender differences.

²⁵⁰ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²⁵¹ Ibid.

It appears that the same is also implied in the statement on same-sex practices.²⁵²

It is not surprising that same-sex practices were considered one of the manifestations of sexual immorality at Corinth. This was because both Greeks and Romans who resided at Corinth belonged to communities who had a different perception of same-sex practices to that of the Jews. In short, both the Greeks and the Romans were known for condoning some manifestations of same-sex practices. It is not surprising that both could have been accused of "overbearing behaviour, the fostering of tyrannies and moral failings."²⁵³ Sexual intercourse was always understood in terms of social relations where social seniority meant active sexual role while social inferiority meant passive sexual role. It was therefore scornful for a Greek or Roman citizen to be sexually penetrated. For the Greeks and Romans there existed some acceptable same-sex practices.²⁵⁴

In mediating slave-master conflicts, Paul is being asked to judge whether practices condoned by the larger community are prohibited to members of the Christian community. The sexual license being practiced by some is also being done by others in the larger community. Clearly, some of the early believers wanted to remain Roman or Greek with the benefit that in the new community there being no slaves or masters, they could freely enjoy that which had limitations outside. Some would have continued with their privileges as masters while some may have turned to male prostitution. The prevalence of same-sex practices could have benefited from the sexual asceticism of women, which meant the male prostitutes would have been the 'next best alternative'. Homosexual practices were therefore largely circumstantial and most of the practitioners would have been heterosexuals.²⁵⁵

²⁵² Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

²⁵³ Erich S. Gruen "Jewish Perspectives on Greek Culture and Ethnicity" in: John J. Collins & Gregory E. Sterling (eds.), *Hellenism in the Land of Israel*, Notre Dame: University of Notre Dame Press, 2001, p. 65.

²⁵⁴ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

²⁵⁵ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

Since most of these early believers thought they were continuing the long divine history of ancient Israel (1 Cor 10:1ff), it is clear that part of the difficulty of mediating the relationship between Judaism and Christianity would be the relevance of Jewish laws for the Christians. It is apparent that what we call Christianity "did not yet exist in the New Testament period as an identifiable religion."²⁵⁶ Faced with the challenge of having to answer whether all Jewish prohibitions and attitudes had been invalidated in Christ, Paul responds to sexual immorality like the Jew that he was and sought to impose Jewish morality on a group that understood itself as no longer under the Jewish laws. Jews understood sexuality and especially same-sex practices as defiling hence they threaten the wellbeing of the whole community. They also understood sexuality in terms of both the role and object of sexual desire. This Jewish cultural and religious understanding of same-sex practices is the basis upon which Paul condemns the male prostitutes and those who hire them. As this letter responds to situations within the Corinthian Christian community, it is therefore directed towards this specific manifestation of homosexuality at Corinth.²⁵⁷

Punishment for Homosexuality in 1 Corinthians 6:9-10

Paul states that all who do such things will not inherit (*kleronomeo*) the kingdom (*basileia*) of God (*Theos*) (1 Corinthians 6:10).

"*Kleronomeo*" means to receive a part of an inheritance or obtain by right of inheritance. It also means to receive a portion assigned to as one's own possession.²⁵⁸

²⁵⁶ Richard A. Horsley, *1 Corinthians*, Nashville: Abingdon Press, 1998.

²⁵⁷ Masiwa Ragies Gunda, "The Bible and Homosexuality in Zimbabwe," 2010.

²⁵⁸ "Strong's Interlinear Bible Search, 1 Corinthians 6:10," www.studydrive.org, (28.3.2016).

"*Basileia*" means royal power, kingship, dominion, and rule. However, it should not be confused with an actual kingdom but rather the right or authority to rule over a kingdom.²⁵⁹

Therefore, Paul clearly states that the punishment for homosexuality is that all its practitioners will not inherit God's kingdom.

Conclusion

Therefore, I am of the view that God in 1 Corinthians 6:9-10 disapproves homosexuality. Scriptures are clear that all those who engage in homosexual practice will not inherit God's kingdom. Nowhere in this text is homosexuality considered as a virtue but is regarded as a vice which is incompatible with Christian moral life.

Homosexuality in Ephesus (1 Timothy 1:9-10)

1 Timothy 1:9-10 is the third New Testament text that mentions homosexuality. Thus, this section of the study analyses this text in order to ascertain its theological and moral meaning.

The Socio-historical Context of Ephesus

1 and 2 Timothy and Titus, commonly referred to as "The Pastoral Letters," are letters from Paul (1 Timothy 1:1; 2 Timothy 1:1; and Titus 1:1) to Timothy (at Ephesus) and Titus (at Crete) concerning pastoral care of the churches. Although Pauline authorship of these letters is debatable, the Early Church placed them among Paul's letters. Obviously, differences in style and vocabulary do exist in the Pastoral Letters when compared with other Pauline letters, these differences may be adequately and convincingly accounted for within the context of Paul's advanced age and his personal concerns for the ministries of Timothy and Titus.²⁶⁰

²⁵⁹ "Strong's Interlinear Bible Search, 1 Corinthians 6:10," www.studylight.org, (28.3.2016).

²⁶⁰ Donald Stamps, *The Full Life Study Bible*, Grand rapids: Zondervan, 1992.

Paul wrote 1Timothy after the events recorded at the end of Acts. Paul's first Roman imprisonment (Acts 28) apparently ended in his freedom (2 Tim 4:16-17). According to Clement of Rome (c. A.D. 96) and the Muratorian Canon (c. A.D. 170), Paul went from Rome westward to Spain and fulfilled a long-desired ministry there (Rom 15:23-24, 28). Based on data in the Pastoral Letters, Paul then returned to the Aegean Sea region (especially Crete, Macedonia, and Greece) for further ministry. During this time, (ca. A.D. 64/65), Paul commissioned Timothy as his apostolic representative to minister in Ephesus, and Titus to Crete. Paul wrote his first letter to Timothy from Macedonia, and a short time later he wrote to Titus. Afterwards, Paul once again became a prisoner in Rome, during which time he wrote a second letter to Timothy, shortly before his martyrdom in A.D. 67/68 (2 Tim 4:6-8).²⁶¹

Paul had a threefold purpose in writing 1 Timothy: (1) to exhort Timothy himself about his ministry and personal life; (2) to urge Timothy to defend the purity of the gospel and its holy standards from corruption by false teachers; and (3) to give Timothy instructions concerning various church matters and problems at Ephesus.²⁶²

The apostle Paul first visited Ephesus on the return from his missionary journey where he "entered the synagogue and reasoned with the Jews" (Acts 18:19-21). On his second journey, Paul came to Ephesus and taught the twelve disciples who knew only the baptism of John (Acts 19:1-7) and "went into the synagogue and spoke boldly for three months, reasoning and persuading concerning the things of the kingdom of God" (Acts 19:8). He later taught in the school of Tyrannus for two years, and as a result, "all who dwelt in Asia heard the word of the Lord Jesus, both Jews and Greeks" (Acts 19:9-10).²⁶³

The City of Ephesus once had a great harbour, but because of the lack of tides in the Mediterranean to clear out the debris, the harbour

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ David Padfield, www.padfield.com/2000/ephesus.html, (22.4.2016).

tended to silt up. It was probably from this harbour that Paul set sail for Macedonia after the Ephesian riot (Acts 20:1).²⁶⁴

The main street of the City of Ephesus was the Arcadian Way which led from the harbour to the theatre. The great theatre at Ephesus gives us some idea of the elegance of the ancient city in the time of Paul.²⁶⁵

The Temple of Artemis or Diana, according to her Roman name, at Ephesus ranked as one of the Seven Wonders of the Ancient World. As the twin sister of Apollo and the daughter of Zeus, Artemis was known variously as the moon goddess, the goddess of hunting, and the patroness of young girls. The temple at Ephesus housed the multi-breasted image of Artemis which was reputed to have come directly from Zeus (Acts 19:35). The temple of Artemis in Paul's day was supported by 127 columns, each of them 60 meters high. The Ephesians took great pride in this grand edifice. During the Roman period, they promoted the worship of Artemis by minting coins with the inscription, "Diana of Ephesus."²⁶⁶

The disturbance over Diana of the Ephesians is one of the most prominent stories in the book of Acts (Acts 19:23-41). There were 33 temples in the Greco-Roman world where Diana was worshiped. After Paul's preaching in Ephesus had harmed the local silversmiths who made statues of Diana, Paul's companions, Gaius and Aristarchus, were dragged into the theatre. The disciples would not allow Paul to go into the assembly.²⁶⁷

Paul Condemns Homosexuality in Ephesus

1 Timothy 1:8-10 says:

Now we know that the law is good, if anyone uses it lawfully,
knowing this: that the law is not laid down for the righteous, but

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ronald Youngblood (ed.), *Nelson's Illustrated Bible Dictionary*, Thomas Nelson Publishers, 1995.

²⁶⁷ David Padfield, www.padfield.com/2000/ephesus.html, (22.4.2016).

for the lawless and disobedient, the ungodly and sinners, the unholy and profane, killers of fathers and killers of mothers, murderers, the sexually immoral, males who take other males to bed (*arsenokoitai*), kidnappers (who sell free people into slavery) (*andrapodistai*), liars, perjury, and whatever else is opposed to sound teaching that accords with the gospel

The word "*pornoi*" has been variously translated in various Bible translations. For instance, "fornicators" (NRSV, REB, ASV), "immoral persons" (RSV, NASB: "men"), "the unchaste" (NAB), "the promiscuous" (NJB), "adulterers" (NIV), "whoremongers" (KJV), "people who are sexually immoral" (NLT), "people who are sexual perverts" (CEV), "the incestuous" (Quinn and Wacker).²⁶⁸

The word "*arsenokoitai*" means abusers of themselves with men.²⁶⁹ It also means men that defile themselves with mankind.²⁷⁰

The Meaning of "Arsenokoitai" in 1 Timothy 1:10

Scroggs attempts to blunt the impact of the text by arguing that *pornois*, *arsenokoitai*, and *andrapodistais* are to be taken as a topical unit. He gives *pornoi* its more restrictive sense of "male prostitutes" (normal Greek usage) rather than "sexually immoral persons" (the broader sense it usually takes in the NT). Then he construes *arsenokoitai* in the limited sense as men who lie with the aforementioned male prostitutes. The word *andrapodistes* means "slave dealer, kidnapper"²⁷¹ but Scroggs thinks that the preceding context of sexual terms implies that *andrapodistai* has a particular type of slave dealer in mind: people who sell boys or girls to be slaves for brothels.²⁷²

²⁶⁸ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²⁶⁹ "Robertson's Word Pictures in the New Testament, 1 Timothy 1," www.studylight.org (16.2.2016).

²⁷⁰ "Vincent's Word Studies, 1 Timothy 1," www.studylight.org (16.2.2016).

²⁷¹ H.G. Liddell, R. Scott, H.S. Jones, *A Greek-English Lexicon*, Oxford University Press, 1996.

²⁷² Robin Scroggs, *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, Philadelphia: Fortress Press, 1983.

Given the association between the practices of some slave traders and the homosexual desires of some buyers, the close proximity of the two terms is not surprising. The mention of *arsenokoitai* may well have called to mind *andrapodistai*. However, there is a difference between recognizing some overlap in the semantic fields of the two terms on the one hand and restricting the semantic of each term only to such overlap on the other hand. The criminal conduct of "*andrapodistai*" was confined to feminizing male slaves for masters with same-sex erotic designs. More central still to the derogatory epithet of "*andrapodistes*" was the illegal kidnapping of freeborn citizens, with or without an accompanying feminization for homoerotic clients.²⁷³ In this connection, Philo treats the sins of "*andrapodistai*" without once mentioning homosexual prostitution.²⁷⁴

The derivation of "*arsenokoitai*" from Lev 18:22; 20:13, its actual usage in Judeo-Christian literature, and the unqualified Judeo-Christian rejection of all forms of homosexuality make an overly narrow interpretation of the word implausible. In fact, that "*arsenokoitai*" has in mind the broad prohibitions in Leviticus against all forms of male-male intercourse is even clearer in 1 Tim 1:10 than in 1 Cor 6:9 since the vice list is described as coming from "the law" (1 Tim 1:8-9).²⁷⁵

Due to the focus on same-sex practices, it is important to note that there is a connection between same-sex practices and libertinism since it is argued that "debauched living and indulgence in illicit pleasures have gone to such a limit, and every sort of libertinism has become so rife in the cities, that they have become the norm."²⁷⁶ This realization helps in further understanding the context in which same-sex practices are condemned in 1 Tim 1:10.

²⁷³ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²⁷⁴ Philo, *Spec. Laws* 4.13-19. www.bu.edu/wcp/Papers/Anci/AnciCala.htm (June 2014).

²⁷⁵ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²⁷⁶ Robin Scroggs, *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, 1983.

Since libertinism could easily result from some interpretations of Paul, it is not surprising that the author appears to be tackling enemies from within the community. Internal strife within these early Christian communities is attested to in many texts. This is supported also from 1 Corinthians, where the pneumatics appeared to have beliefs and practices bordering on libertinism. Again as in Corinth, this teaching was dangerous because it led to two opposite tendencies; asceticism on the one hand (1Tim 4:1-4) and probably licentiousness on the other hand (1Tim 5:22).²⁷⁷ Clearly, this text shows that the problems that Paul had dealt with earlier had not ended in Christian communities. Yet, it still remains a mystery why the author of this letter omits the "*malakoi*." In this world "*arsenokoitai*" could well refer to homosexuals, since certainly a century later there were many in Ephesus.²⁷⁸ Therefore, the meaning of these texts can be understood in their socio-historical contexts.

Therefore, I am of the opinion that 1 Timothy 1:10 disapproves of homosexuality. It is portrayed as a vice which is contrary to sound doctrine.

Conclusion

The bible offers a consistent perspective of homosexuality through the injunctions found in Romans 1:24-27; 1 Cor 6:9 and 1 Timothy 1:10. For instance, Romans 1:24-27 condemns both male homosexuality (gay) and female homosexuality (lesbianism). Moreover, the occurrence of "*malakoi*" and "*arsenokoitai*" in the vice list in 1 Cor 6:9, and of *arsenokoitai* in the vice list in 1 Tim 1:10, confirms Paul's previous injunction in Rom 1:24-27. In 1 Cor 6:9, the term "*malakoi*" has most in view males who actively seek to transform their maleness into femaleness in order to make themselves more attractive as receptive or passive sexual partners of men; "*arsenokoitai*" has most in view of men who serve as the active sex partners of the "*malakoi*." Both vice lists clearly establish that, people who are involved in homosexual intercourse will be excluded

²⁷⁷ Donald Guthrie, *The Pastoral Epistles and the Mind of Paul*, Illinois: Tyndale, 1956.

²⁷⁸ Ibid.

from God's kingdom or will be put to death (Romans 1:24-32; 1 Cor 6:9).²⁷⁹

Therefore, I argue that the biblical witness remains valid in the contemporary situation. Paul dealt with homosexuality as a serious moral issue with ramifications for not entering God's kingdom or death.

It is important to note that wherever homosexuality occurs in the biblical record it is an occasion of scandal and judgment. Homosexuality is never viewed in a positive light in scripture, it is considered as a moral vice. For this reason, the contemporary church and society should adopt a strong witness on homosexuality consistent with the Scriptures. Therefore, I argue that given the Bible's clear and consistent condemnation of homosexuality, the most important question is: what should these texts mean for the contemporary church?

My opinion is that Scripture is the first place to look and the last place of appeal for theological and ethical guidance. My conviction is that inspiration of Scripture and the righteousness stimulated by centuries of its influences suggest that biblical values are lasting values. Therefore, I affirm the on-going relevance of biblical normativeness or morality.

Moreover, the strong biblical testimony against homosexual practice sets the burden-of proof bar very high for Christians who wish to discount the Bible's witness. The clear implication, then, is that the unambiguous rejection of same-sex intercourse that we find in Scripture remains in force for the contemporary Church.

Homosexuality in Islam: Qur'an, Hadith and Sharia

Homosexuality is forbidden by Allah in the "Quran," the Holy Scriptures and the "*Hadith*," a collection of sayings attributed to Prophet Muhammad (S.A.W.), and by *Sharia* law.²⁸⁰

²⁷⁹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, 2001.

²⁸⁰ Asifa Siraj, "The Construction of the Homosexual 'other' by British Muslim Heterosexuals." *Contemporary Islam* 3.1 (2009), pp. 41-57.

The major Qur'anic texts on homosexuality narrate the story of the people of Lot who lived in the cities of Sodom and Gomorrah. The story of Lot from the Bible is also found in the Qur'an, albeit retold with a few differences. Amongst other things, the Qur'anic rendition links the destruction of Sodom specifically to the homosexual activities of its inhabitants.²⁸¹ Therefore, this book assumes that the socio-historical context of the Ancient Near East (ANE) and the socio-historical context of Sodom and Gomorrah, which were discussed earlier in this chapter, also applies to the Qur'anic texts on homosexuality.

Homosexuality in the Qur'an

The Qur'anic references for homosexuality are connected to the fate of "the people of Lut" and their destruction by Allah is associated explicitly with their homosexual practices (Quran 7:80–84, 11:77–83, 21:74, 22:43, 26:165–175, 27:56–59, and 29:27–33).

====For instance, in Qur'an 7:80-81, Allah explains that:

We also sent Lut: He said to his people: "Do ye commit lewdness such as no people in creation (ever) committed before you? For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds.

Similarly, Qur'an 26:165-166 holds that:

Of all the creatures in the world, will ye approach males, and leave those whom Allah has created for you to be your mates? Nay, ye are a people transgressing (all limits)!" They said: "If thou desist not, O Lut! Thou wilt assuredly be cast out!" He said: "I do detest your doings. O my Lord! Deliver me and my family from such things as they do!" So we delivered him and his family - all except an old woman who lingered behind. Then afterward we destroyed the others. We rained down on them a shower (of brimstone); and evil was the shower on those who were admonished (but heeded not)!

Qur'an 27:54 states that:

²⁸¹ https://wikiislam.net/wiki/Islam_and_Homosexuality, (27.5.2016).

(We also sent) Lut (as a messenger): behold, he said to his people, "Do ye do what is shameful though ye see (its iniquity)? Would ye really approach men in your lusts rather than women? Nay, ye are a people (grossly) ignorant! But his people gave no other answer but this: they said, "Drive out the followers of Lut from your city: these are indeed men who want to be clean and pure!" Then we saved him and his household save his wife; we destined her to be of those who stayed behind. And we rained down on them a shower (of brimstone): and evil was the shower on those who were admonished (but heeded not)!

Qur'an 29:28-29 says that:

And (remember) Lut: behold, he said to his people: "Ye do commit lewdness, such as no people in Creation (ever) committed before you. Do ye indeed approach men, and cut off the highway and practice wickedness (even) in your councils?" But his people gave no answer but this: they said: "Bring us the Wrath of God if thou tell the truth."

These Qur'anic texts undoubtedly presume the sin of homosexuality to be one of the worst sins (*kabaa'ir*) that Allah has forbidden.²⁸²

The first thing the Qur'an mentions is that homosexual practice was invented by the people to whom Prophet Lut was sent as a messenger. He is very emphatic about this: "And [remember] Lut, when he said unto his people: 'Do you commit abominations such as none in all the world has ever done before you?'" (Al-A'raf 7:80). The Qur'anic word is "*al-fahisha*," which means lewdness, shameful act, indecency. Fornication and adultery (*zina*) are also mentioned as examples of "*fahisha*" in the Qur'an (Isra 17:32). But here the definite article *al* is added to show the even more serious nature of this act. A homosexual act is not "*fahisha*" but "*al-fahisha*." It is not just a shameful act but *the* shameful act, the lewdness, the abomination.²⁸³

²⁸² https://wikiislam.net/wiki/Qur'an,_Hadith_and_Scholars:Homosexuality (22 April 2016).

²⁸³ Khalid Baig, Qur'an on Homosexuality: Setting the Record Straight, www.albalagh.net/general/0101.shtml, (27.4.2016).

The story of Lot in narrating that no one before them committed this act, the Qur'an uses the word "*min*" in addition to "*ahadin*." Without this, it would still mean that no one did it before. But with "*min*" emphasis is added. In other words, no one whosoever ever did this act among all the creatures. This is an outright rejection of the claim that this tendency is an inborn and ingrained part of nature for which no person should be held accountable. Prophet Lut accuses them of having made this choice. And the Sodomites do not say that they are helpless because it is a call of nature. Rather they say, "You know very well what we *want*" (Hud. 11:79). And that the Prophet would be added to the list of people who have been expelled from their city for objecting to their practices if he does not cease and desist from criticizing their way of life (Al-Shu'ra 26:167). They are the inventors of this perversion and fully committed to use violence to defend it.²⁸⁴

Homosexuality in the Hadith

The *Hadith* are collections of sayings attributed to Muhammad (S.A.W). Many Hadiths discuss "*liwat*" (sexual intercourse between males) and "*Sihaq*" (lesbian sexual activity), which constitutes "*zina*" (illegitimate sexual intercourse).²⁸⁵

Abdullah Ibn 'Abbas narrated in Sahih Bukhari that:

The Prophet cursed effeminate men (those men who are in the similitude (assume the manners of women) and those women who assume the manners of men, and he said, "Turn them out of your houses." The Prophet turned out such-and-such man, and 'Umar turned out such-and-such woman.²⁸⁶

Abdullah Ibn Abbas narrated in Sunan Abu Dawud that:

²⁸⁴ Ibid.

²⁸⁵ Asifa Siraj, "The Construction of the Homosexual 'other' by British Muslim Heterosexuals." *Contemporary Islam* 3.1 (2009), pp. 41-57.

²⁸⁶ Abdullah Ibn Abbas in Sahih Bukhari, Vol 7, Book 72, Number 774, www.usc.edu/org/cmje/religious-texts/hadith/bukhari/072-sbt.php, (22.4.2016).

The Prophet (peace be upon him) said: If you find anyone doing as Lot's people did, kill the one who does it, and the one to whom it is done.²⁸⁷

Al Tirmidhi narrated that:

Whoever is found conducting himself in the manner of the people of Lot, kill the doer and the receiver.²⁸⁸

Jaabir in Al Tirmidhi narrated that:

The Prophet (peace and blessings of Allah be upon him) said: 'There is nothing I fear for my ummah more than the deed of the people of Loot.'²⁸⁹

Homosexuality in Sharia (Islamic Law)

Sharia or Islamic law is the religious legal system governing the members of the Islamic faith.²⁹⁰ *Sharia* is derived from the religious precepts of Islam, particularly the Quran and the Hadith. The term *sharia* comes from the Arabic language term *sharī'ah*, which means a body of moral and religious law derived from religious prophecy, as opposed to human legislation.²⁹¹

Most scholars of Sharia, interpret homosexual activity as a punishable offence as well as a sin. There is no specific punishment prescribed,

²⁸⁷ Abdullah Ibn Abbas in Sunan Abu Dawud, Book 38, Number 4447, www.usc.edu/org/cmje/religious-texts/hadith/Bukhari/072-sbt.php, (22.4.2016).

²⁸⁸ Jami` at-Tirmidhi Vol. 3, Book of Legal Punishments, Hadith 1457, <https://muflihun.com/tirmidhi/15/1457> (22.4.2016).

²⁸⁹ Jaabir in Jami` at-Tirmidhi Vol. 3, Book of Legal Punishments, Hadith 1457, <https://muflihun.com/tirmidhi/15/1457> (22.4.2016).

²⁹⁰ Robert M Ritter and Lesley Brown, *New Oxford Dictionary for Writers and Editors: The Essential A-Z Guide to the Written Word*, Oxford: Oxford University Press. 2005.

²⁹¹ J. Rehman, "The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq," *International Journal of Law, Policy and the Family*, 21(1), (2007), pp. 108–127.

however, and this is usually left to the discretion of the local authorities on Islam.²⁹²

The sins of the people of Lut became proverbial, and the Arabic words for homosexual behaviour (*liwāṭ*) and for a person who performs such acts (*lūṭī*) both derive from his name.²⁹³

The Quran is also a legal document; therefore, it has several major sins outlined in the text. Two of these consider sexual misconduct. They are "Zina" and "Liwat." "Zina" literally means "adultery." It is "sex between a man and a woman who is neither his wife nor his slave—the most serious of sexual transgressions described in the Qur'an." "Liwat" is "anal intercourse between men or anal sex between a male and a female 'stranger'—that is, a woman who is neither his wife nor his slave and over whom he has no sexual rights." The issue of homosexuality comes more from a standpoint of legal sexual rights.²⁹⁴

The only Qur'anic text that prescribes a strictly legal position on homosexuality is Quran 4:15-16; but, it deals more generally with public practice of adultery.²⁹⁵ Quran 4:15-16 says that:

And as for those who are guilty of an indecency from among your women, call as witnesses against them four (witnesses) from among you; then if they bear witness confine them to the houses until death takes them away or Allah opens some way for them. And as for the two who are guilty of indecency from among you, give them both a punishment; then if they repent and amend, turn aside from them; surely Allah is oft-returning (to mercy), the Merciful.

²⁹² Khalid Duran, "Homosexuality and Islam." *Homosexuality and World Religions* (1993), pp. 181-198.

²⁹³ www.williamapercy.com/.../index.php?...Encyclopedia_of_Homosexuality (27.4.2016).

²⁹⁴ Kecia Ali, *Sexual Ethics & Islam*, Oxford, England: One World Publishing, 2006.

²⁹⁵ Jim Wafer, "Muhammad and Male Homosexuality," In Stephen O. Murray and Will Roscoe, *Islamic Homosexualities: Culture, History and Literature*, New York: New York University Press, 1997.

The crime of homosexuality is one of the greatest of crimes, the worst of sins and the most abhorrent of deeds, and Allah punished those who did it in a way that He did not punish other nations (Qur'an 7:80-81 and 26:165).²⁹⁶ In other words, death is the punishment for homosexuality. However, there are varying opinions on how the death penalty was to be carried out. Jim Wafer argues that Abu Bakr recommended toppling a wall on the evil-doer, or else burning alive.²⁹⁷ Ali ibn Abi Talib ordered death by stoning for one who committed the sin of "lūṭi" and had another thrown head-first from the top of a minaret (a tall slender tower, typically part of a mosque, with a balcony from which a muezzin calls Muslims to prayer) while Ibn Abbas said that this last punishment must be followed by stoning.²⁹⁸

Punishment for Homosexuality in the Qur'an and Hadith

Qur'an 7:80-81 and 26:165 states that Allah rained down brimstone on the people of Loot as a punishment for homosexuality. Qur'an 29:28 says that Allah's messengers told Abraham that:

"We are indeed going to destroy the people of this township: for truly they are (addicted to) crime" (Qur'an 29:28). In other words, the Qur'an states that death and destruction are the punishment for homosexuality.

Homosexuality is one of the greatest of crimes, the worst of sins and the most abhorrent of deeds, and Allah punished those who did it in a way that He did not punish other nations.²⁹⁹

²⁹⁶ Al Munajjid, The Punishment for Homosexuality, Islam Q & A, Fatwa No. 38622, <https://islamqa.info/en/38622> (22.4.2016).

²⁹⁷ Jim Wafer, "Muhammad and Male Homosexuality," in Stephen O. Murray and Will Roscoe. *Islamic Homosexualities: Culture, History and Literature*, New York University Press, 1997.

²⁹⁸ Bosworth, Clifford Edmund, ed. *Encyclopedia of Islam*, Vol 5-Vol V (Khe-Mahi). Vol. 5. Brill Archive, 1986.

²⁹⁹ Al Munajjid, The Punishment for Homosexuality, Islam Q & A, Fatwa No. 38622, <https://islamqa.info/en/38622> (22.4.2016).

Conclusion

Homosexuality is considered as a sin in both the Qur'an and the Hadith. Both the Qur'an and the Hadith hold that homosexuality is punishable by death. A 2014 *fatwa* (an Islamic religious ruling, a scholarly opinion on a matter of Islamic law) issued on *onIslam.net* proclaimed that homosexuality is "abnormal" and "abhorrent" and confirmed that gays should be killed. The proclamation says:

The punishment for men or women who are unwilling to give up homosexuality and therefore are rejecting the guidance of Allah Most High is, in fact, death according to Islam.³⁰⁰

In conclusion, I argue that given the Bible's and the Qur'an's clear and consistent condemnation of homosexuality, the most important question is: what should these texts mean for the contemporary religious community? My opinion is that Scripture is the first place to look and the last place of appeal for theological and ethical guidance. The strong biblical and Qur'anic testimony against homosexual practice implies that the unambiguous rejection of same-sex intercourse that we find in Scripture remains in force for the contemporary religious community.

Moreover, Islamic teaching on homosexuality considers it as sin that should not be practiced by the faithful believers in Allah. Therefore, there is unanimous testimony for rejecting the vice of homosexuality in both the Judeo-Christian and Islamic Scriptures.

³⁰⁰ Fatwa on Homosexuality, www.onIslam.net, (22.4.2016).

Chapter 7: Religious Communities' Debate on Homosexuality

In Chapter 2, religious responses on homosexuality in Malawi came from both Christians and Muslims. Therefore, this chapter will present a discussion on the religious communities' debate on homosexuality, focusing on two world religions: Christianity and Islam. This is because these world religions have an impact on religious groups in Malawi. Both religions have a relationship with Malawi and they do send their missionaries to work in Malawi.

Progression of the Homosexuality Debate in Christianity

The Church's response to the gay and lesbian reality needs a careful thought. What does the church do in this dilemma? Show compassion? Or speak prophetic judgment (Hosea 4:1-3) toward homosexual practice, as part of post-modernity culture's distortion of sexual values?¹

Roman Catholicism and Homosexuality

The Roman Catholic Church has contributed to the homosexual debate in various ways. This section of the study will discuss Roman Catholic's pro-homosexuality and anti-homosexuality responses.

Pro-Homosexuality Responses by the Roman Catholic Church

The Roman Catholic Church has made some pro-homosexuality responses. Homosexual clergy, and homosexual activity by clergy, are not an exclusively modern phenomena within the Roman Catholic Church. Donald Cozzens estimates that the percentage of gay priests ranges from 23–58%. This suggests a higher than average numbers of

¹ Willard Swartley, *Homosexuality: Biblical Interpretation and Moral Discernment*, Scottsdale, PA: Herald Press, 2003.

homosexual men (active and non-active) within the Catholic priesthood and higher orders.²

The 1961 instruction issued by the Sacred Congregation for Religious stated that religious vows and ordination should be barred to homosexual candidates. However, bishops should exercise discretion in allowing further instruction of offending but penitent seminarians willing to uphold the same standards of celibate chastity as heterosexual seminarians.³ This means that even celibate seminarians face the temptation of indulging in homosexual acts.

In November 2005, the Congregation for Catholic Education under the direction of Pope John Paul II issued a document concerning the criteria for the discernment of vocations regarding homosexual persons. Under the policy, men with 'transitory' homosexual tendencies may be ordained deacons following three years of prayer and chastity, but men with 'deeply rooted homosexual tendencies' may never be ordained.⁴ The document further enhanced vigilance in barring homosexuals from seminaries, and from the priesthood. The preparation for this document had started 10 years before its publication.⁵ This instruction was seen at the time as an official "answer" by the Catholic Church to several sex scandals involving priests in the late 20th or early 21st century like the 2004 sex scandal in a seminary at St. Polten, Austria.⁶ Moreover, Cardinal Secretary of State, Tarcisio Bertone, acting on behalf of Pope Benedict XVI, reiterated the instruction barring practicing homosexuals from being admitted into Catholic seminaries in May 2008.⁷ This

² James Martin, "The Church and the Homosexual Priest". America, *Jesuit Magazine*, (4.11.2000).

³ Valerio Valeri, "Careful Selection and Training of Candidates for the States of Perfection and Sacred Orders," *Sacred Congregation for Religious*, The Holy See (2.2.1961).

⁴ Richard Scorer, "Betrayed: The English Catholic Church and the Sex Abuse Crisis", *Biteback*, 2014.

⁵ "World Briefing: Europe: Austria: Seminary Sex Scandal," *New York Times*, (13.7.2004).

⁶ Ibid.

⁷ "Vatican says Prohibition against Gays in Seminaries is Universal," *Catholicnewsagency.com*. (31.3.2016).

suggests that the Catholic Church acknowledged the proliferation of homosexual practice among the church members and the clergy.

Peter Tatchell, a gay rights activist argued that scapegoating gay people within the Church had three implications. First, it was a way for the Vatican to wash its hands of responsibility for the clerical abuse that had been taking place. Second, it was also a way to further demonize gay people and justify the church's anti-gay policies. Third, many gay clergy had entrenched the homophobia of the Vatican. They espoused it with great enthusiasm, seeking to atone for their own homosexuality by being ever more homophobic.⁸

In October 1986, the Sacred Congregation for the Doctrine of the Faith released a letter addressed to all the bishops of the Catholic Church entitled "On the Pastoral Care of Homosexual Persons."⁹

Cardinal Joseph Ratzinger signed the letter. It gave instructions on how the clergy should deal with, and respond to lesbian, gay, bisexual and transgender (LGBT) people.¹⁰ The letter was designed to achieve two objectives. The first objective was to remove any ambiguity about tolerance of homosexual orientation proceeding from the earlier "Persona Humana." The second objective was to curb the growing influence of gay-accepting groups and clergy, especially in the Roman Catholic Church in the United States.¹¹

The letter argued that, while homosexual orientation was not in itself a sin, it was nevertheless a tendency towards the "moral evil" of homosexual sexual activity, and so must be considered "an objective disorder."¹² The letter went on to say that when homosexual activity was the

⁸ Richard Scorer, "Betrayed: The English Catholic Church and the Sex Abuse Crisis", *Biteback*, (2014).

⁹ [www.vatican.va/.../rc_con_cfaith_doc_19861001_homosexual-persons_\(29.3.2016\)](http://www.vatican.va/.../rc_con_cfaith_doc_19861001_homosexual-persons_(29.3.2016).).

¹⁰ Jeffrey S. Siker, *Homosexuality and Religion: An Encyclopedia*, Westport, CT: Greenwood Press, 2007.

¹¹ John L. Allen, *Benedict XVI: A Biography of Joseph Ratzinger*, Edinburgh, A & C Black Publishers, 2001

¹² Brian Scarnecchia, *Bioethics, Law, and Human Life Issues*, Lanham: Scarecrow, 2010.

result of deliberate choice, it is not made inculpable by natural sexual orientation, contradicting the idea that natural orientation always rendered it totally inculpable.¹³ The orientation diminished a person's culpability in proportion to the force of the psychological impulse for the immoral activity.¹⁴ This natural homosexual orientation was "essentially self-indulgent" since homosexual sexual acts were not genuinely loving or selfless.¹⁵

The letter condemned physical and verbal violence against homosexual persons, but asserted that condemnation of violence did not mean that the homosexual orientation was good or neutral or that homosexual sexual acts should be permitted.¹⁶ The letter also said that accepting homosexual acts as morally equivalent to married heterosexual acts was harmful to the family and society and warned bishops to be on guard against, and not to support, Catholic organizations not upholding the Church's doctrine on homosexuality, groups which the letter said were not really Catholic.¹⁷ This alluded to LGBT and LGBT-accepting Catholic groups such as DignityUSA and New Ways Ministry.¹⁸ It eventually led to the evacuation of Dignity from Church property.¹⁹

A number of criticisms were raised against the letter. First, the document stated that a gay male or lesbian sexual identity should neither be celebrated nor be considered as a source of pride.²⁰ Second, the claims that accepting and legalizing homosexual behaviour led to violence were seen as controversially blaming gay people for homophobic

¹³ "Congregation for the Doctrine of the Faith, Letter on the Pastoral Care of Homosexual Persons, 1 October 1986," www.vatican.va, (29.3.2016).

¹⁴ John S. Grabowski, *Sex and Virtue: An Introduction to Sexual Ethics*, Washington, DC: Catholic University of America Press, 2007.

¹⁵ Scarneccia D. Brian, *Bioethics, Law, and Human Life Issues*, Lanham: Scarecrow Press, 2010.

¹⁶ Jeffrey Siker, *Homosexuality and Religion: An Encyclopaedia*, Santa Barbara: Greenwood, 2007.

¹⁷ John L. Allen, *Benedict XVI: A Biography*, Edinburgh, A & C Black, 2001.

¹⁸ Ibid.

¹⁹ Chester Gillis, *Roman Catholicism in America*, Columbia University Press, 2013.

²⁰ Jeffrey S. Siker, *Homosexuality and Religion*, 2007.

violence and encouraging homophobic violence.²¹ Third, the letter blamed HIV/AIDS on gay rights activists and gay-accepting mental health professionals: even when the practice of homosexuality may seriously threaten the lives and well-being of a large number of people, its advocates remain undeterred and refused to consider the magnitude of the risks involved.²² Andrew Sullivan called this comment "extraordinary for its lack of compassion."²³

In a statement released in July 1992, the Congregation for the Doctrine of the Faith expanded on the letter and stated that discrimination against gay people in certain areas, such as selecting adoptive or foster parents or in hiring teachers, coaches, or military service members, is not unjust.²⁴

I am of the view that although the letter does not sufficiently address all issues pertaining to homosexuality to the full satisfaction of homosexual people and pro-gay rights activists; nevertheless, it demonstrates the church's engagement with the homosexual debate.

Pope Francis spoke about gay people in 2013 arguing that the key is for the church to welcome, not exclude, and show mercy, not condemnation. Religion has the right to express its opinion in the service of the people but God in creation has set us free: it is not possible to interfere spiritually in the life of a person.²⁵

Pope Francis acknowledged the existence of a "gay lobby" within the Vatican. In his remarks during a meeting held in private with Catholic Religious from Latin America, he promised to see what could be done

²¹ Ibid.

²² Mary Jo Weaver, "Resisting Traditional Catholic Sexual Teaching: Pro-Choice Advocacy and Homosexual Support Groups." *What's Left? Liberal American Catholics*, Bloomington: Indiana University Press. 1999.

²³ John L. Allen, *Benedict XVI: A Biography*, 2001.

²⁴ "Some Considerations Concerning the Catholic Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons", www.vatican.va. (12.6.2016).

²⁵ "Pope Francis: Church Cannot Be 'Obsessed' With Gays, Abortion Ban," *Fox News Latino*, (19.9.2013).

to address the issue.²⁶ In a July 2013 media briefing, he drew a distinction between the problem of lobbying and the sexual orientation of people. He argued that the problem was not having a homosexual orientation but the problem was lobbying by this orientation, or lobbies of greedy people, political lobbies, Masonic lobbies, so many lobbies. This was the worse problem.²⁷

The Pope's comments were welcomed by several LGBT people who noted that this was the first time a pope had used the word "gay" in public. He had also accepted the existence of gay people as a recognizable part of the Catholic Church community for the first time.²⁸

Pope Francis also advocated for the importance of education in the context of contemporary difficulties facing children, including children of gay couples.²⁹ The Italian media interpreted the Pope's views as indicating a move towards accepting civil unions for gay couples.³⁰ However, according to Thomas Rees, the Director of the Holy See Press Office argued that this was a manipulation of the Pope's words as he was only talking about the difficulties of children, not making a declaration on the debate in Italy concerning gay unions.³¹

Pope Francis presided over the 2014 Synod of Bishops. This was the first Church Synod to explicitly examine the issue of pastoral care for people in same-sex civil unions and marriages, identifying it as one of several concerns which were unheard of until a few years ago.³² The synod's

²⁶ "Pope Francis 'confirms Vatican gay lobby and corruption,'" *BBC News*, (12.6.2013).

²⁷ "Pope Francis: Who am I to judge gay people?" *BBC News*, (29.7.2013).

²⁸ Patsy McGarry, "Irish gay group praises Pope Francis's airborne comments," *Irish Times*, (6.8.2013).

²⁹ Jimmy Akin, "What did Pope Francis say about the children of homosexual couples? 8 things to know and share" www.ncregister.com, (4.1.2014).

³⁰ Nick Squires, "Pope says Catholic Church should not dismiss Gay Marriage," *The Daily Telegraph*, (10.3.2014).

³¹ Thomas Reese, "Vatican Spokesman clarifies Pope on Civil Unions" ncronline.org, (6.3.2004).

³² Synod of Bishops, III Extraordinary General Assembly, "Pastoral Challenges to the Family in the Context of Evangelization", Preparatory Document, Question 5 c www.vatican.va (30.3.2016).

working document called for less judgment towards people that are gay and more understanding towards same-sex couples in civil unions or marriages, as well as an equal welcome for children of such couples (including conferring baptism), while still rejecting the validity of same-sex marriage itself.³³ However, when the synod convened to discuss the issue, the final report failed to contain the proposed language as it did not manage to receive the necessary two-thirds of attending bishops' support.³⁴

Anti-Homosexuality Responses by the Roman Catholic Church

The Roman Catholic Church is one of the churches which consider homosexual practice as sinful; hence, it should not be condoned by the church.

According to the Roman Catholic Church's catechism, homosexuality refers to relations between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex. It has taken a great variety of forms through the centuries and in different cultures. Its psychological genesis remains largely unexplained. Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that 'homosexual acts are intrinsically disordered.' They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.³⁵

The Roman Catholic Church's catechism further argues that the number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination constitutes for most of them a trial.³⁶

³³ Delia Gallagher, "Vatican softens tone toward Gays and Lesbians", *CNN*, (26.6.2014).

³⁴ "Catholic Synod: Pope Francis Setback on Gay Policy," *BBC News*. (18.10.2014).

³⁵ "Chastity and Homosexuality, Catechism of the Catholic Church - Article 6: The sixth commandment," www.vatican.va, (29.3.2016).

³⁶ "Catechism of the Catholic Church, 2358-2359", www.scborromeo.org, (29.3.2016).

The Catechism's first provisional edition in 1992 contained the line: "they do not choose their homosexual condition; for most of them it is a trial" which was changed in the 1997 definitive edition to say instead: "this inclination, which is objectively disordered, constitutes for most of them a trial."³⁷ In this way, the Roman Catholic Church acknowledges the prevalence of homosexuality in the post-modern world and looks for means and ways of ministering to people with a homosexual orientation.

The *Persona Humana* document, which was issued by the Sacred Congregation for the Doctrine of the Faith in 1975, dealt with sexual ethics. It stated that acceptance of homosexual activity runs counter to the church's teaching and morality. It distinguishes between people who are gay because of socio-environmental factors and those who were innately or pathologically homosexual. It further criticizes those who argue that innate homosexuality justified same-sex sexual activity within loving relationships and stated that the Bible condemned homosexual activity as depraved, intrinsically disordered, never to be approved, and a consequence of rejecting God.³⁸

Cardinal Joseph Ratzinger remarked that the *Persona Humana* description of homosexual acts as "intrinsically disordered" was misinterpreted by some as permitting the qualification of the homosexual tendency as neutral or even good. This was an idea rejected also in the 1986 Letter on the Pastoral Care of Homosexual Persons.³⁹ In other words, while Cardinal Joseph Ratzinger distinguished between homosexual tendencies and homosexual behaviour, nevertheless, he acknowledged the intrinsic evil inherent in both.

In 2008, the Holy See, as an observer at the United Nations, opposed a proposed declaration opposing human rights violations based on sexual orientation or gender identity, such as criminalization, death penalty,

³⁷ *Catéchisme de l'Église Catholique*, Paris: Mame, 1992.

³⁸ "Persona Humana, 1975," (29.3.2016).

³⁹ Michael L. Coulter, Richard S. Myers, Joseph A. Varacalli (eds.), *Encyclopedia of Catholic Social Thought, Social Science, and Social Policy Supplement*, Scarecrow, 2012.

violence and discrimination, and affirming the principles of human rights without regard to sexual orientation or gender identity.⁴⁰

Archbishop Celestino Migliore, the former Holy See's representative at the United Nations General Assembly, argued that the UN proposed declaration asked for the addition of new categories to be protected against discrimination. However, it did not consider that, if adopted, it would create terrible new discriminations such as pillorying and pressuring of states that do not recognize as marriage a union between persons of the same sex.⁴¹ He further argued in his speech to the General Assembly on 18 December 2008 that the Holy See appreciates the attempts made [in the draft declaration] to condemn all forms of violence against homosexual persons as well as urge States to take necessary measures to put an end to all criminal penalties against them. However, its failure to define the terms "sexual orientation" and "gender identity" would produce "serious uncertainty" and "undermine the ability of States to enter into and enforce new and existing human rights conventions and standards."⁴²

The Vatican's stance against the UN proposed declaration opposing LGBT rights violation was decried by Arcigay, a gay rights association and the newspaper, *La Repubblica*. Furthermore, an editorial in another newspaper, *La Stampa*, called the Vatican's reasoning "grotesque" or ridiculous.⁴³

Archbishop Silvano Maria Tomasi, the former Holy See representative at the United Nations, made a contribution at the 16th session of the UN Human Rights Council in 2011. He argued that a state should never punish a person, or deprive a person of the enjoyment of any human

⁴⁰ Carol Glatz, "Vatican Makes Clear its Opposition to U.N. Homosexuality Declaration," *Catholic News Service*, (2.12.2008).

⁴¹ Philip Pulella, "Vatican Attacked for Opposing Gay Decriminalization," Reuters, (2.12.2008).

⁴² "Vatican U.N. Delegation Calls for End to Unjust Discrimination against Homosexuals," *Catholic News Agency*, (19.12.2008).

⁴³ Carol Glatz, "Vatican Makes Clear its Opposition to U.N. Homosexuality Declaration," *Catholic News Service*, (2.12.2008).

right, based just on the person's feelings and thoughts, including sexual thoughts and feelings. But states can, and must, regulate behaviours, including various sexual behaviours. He said that throughout the world, there was a consensus between societies that certain kinds of sexual behaviours must be forbidden by law. Paedophilia and incest were two examples. Moreover, he said that recognizing gay rights would cause discrimination against religious leaders and that there was concern lest consequent legislation would lead to "natural marriages and families" being "socially downgraded."⁴⁴

The UN Secretary General, Ban Ki-Moon, gave a speech calling on African nations to repeal laws that place sanctions on homosexual conduct on 28 January 2012. In response, African Cardinal Robert Sarah, president of the Pontifical Council Cor Unum, called the speech stupid. He further argued that poor countries like Africa just accepted it because it was imposed upon them through money tied to aid. He finally called upon African bishops to react against this move against African culture.⁴⁵

While recognizing that some of the sanctions imposed on homosexuals in Africa are an exaggeration, he stated that the intensity of the reaction is probably commensurate with tradition. Just as there's a sense of a call for rights, there's also a call to respect culture, of all kinds of people. Therefore, if homosexuality is being stigmatized, in fairness, it was probably right to find out why it was being stigmatized. A distinction should be made between human rights and moral issues.⁴⁶

I am of the view that the Roman Catholic Church is one of the religious giants standing against the global promotion of LGBT rights by the UN. Therefore, the Holy See's observer status at the UN provides a good platform for its engagement in the homosexual debate; particularly, by

⁴⁴ Benjamin Mann, "Vatican official: UN Gay 'rights' Agenda endangers Church's Freedom," *Catholic News Agency*, (8.7.2011).

⁴⁵ "Cardinal responds to UN's criticism of Africa's Social Policies" www.ncregister.com, (21.2.2013).

⁴⁶ Edward Pentin, "Cardinal Responds to U.N.'s Criticism of Africa's Social Policies," www.ncregister.com. (29.3.2016).

defending the family as a unit composed of a man and a woman with the potential for procreation.

Pope John Paul II's Anti- Homosexuality Views

Pope John Paul II first mentioned papal encyclicals in the *Veritatis Splendor* of 1993 which specifically pronounced the intrinsic evil of the homosexuality condition.⁴⁷

The pontificate of John Paul II increasingly saw sexual morality as a paramount concern, and homosexuality, alongside contraception, divorce and illicit unions, as a dimension of the "culture of death" which he taught and preached with increasing vehemence.⁴⁸

Pope John Paul II argued that homosexual intercourse should be regarded as an abuse of another's body, not a mutual self-giving in familial love, physically expressed by the masculine and feminine bodies; and such intercourse is also performed by a choice of the will, unlike homosexual orientation, which he acknowledged was usually not a matter of free choice.⁴⁹

Pope John Paul II praised the bishops of the United States on 5 October 1979, for stating: "homosexual activity ... as distinguished from homosexual orientation is morally wrong." He argued that instead of holding out false hope to homosexuals facing hard moral problems, they had upheld the true dignity, the true human dignity, of those who look to Christ's Church for the guidance which comes from the light of God's word.⁵⁰

In 2000, he criticized the inaugural WorldPride event scheduled for Rome in that year as an affront to the Great Jubilee of the year 2000

⁴⁷ John L. Allen, *Benedict XVI: A Biography*, 2001.

⁴⁸ John Cornwell, *The Pope in winter: the Dark Face of John Paul II's Papacy*, Harmondsworth: Penguin, 2005.

⁴⁹ Charles E. Curran, Richard A. McCormick (eds.), *John Paul II and Moral Theology*, Mahwah, NJ: Paulist Press 1998.

⁵⁰ "Address of His Holiness Pope John Paul II to the Bishops of the United States of America," www.vatican.va, (23.5.2016).

and as an offence to the Christian values of Rome. He further recalled the Church's teaching that homosexual acts are contrary to the natural law, while every sign of unjust discrimination against homosexuals should be avoided.⁵¹

Gay Krant, a Dutch gay magazine, responded to the pope's critique by initiating a case against the pope in the Dutch law courts, arguing that his comment that homosexual acts were contrary to the laws of nature gave rise to hatred against, and discrimination of certain groups of people in violation of Dutch law.⁵² However, the case was dismissed when the court ruled that the Pope was immune from prosecution as a head of state, the Vatican.⁵³

I am of the view that Pope John Paul II's views on homosexuality are consistent with the traditional Roman Catholic teachings which have identified homosexuality as an intrinsic evil and an attack on the fundamental social unit of the family. As a defender of humanity, he did not depart from the traditional teachings of the church which promotes procreation as a means of ensuring the continuity of the human race.

Pope Benedict XVI's Anti-Homosexuality Views

Pope Benedict XVI denounced the powerful political and cultural currents seeking to alter the legal definition of marriage on 9 March 2012. He referred to a cultural shift toward gay marriage in the U.S.A.⁵⁴ He argued that the Church's conscientious effort to resist this pressure called for a reasoned defense of marriage as a natural institution consisting of a specific communion of persons, essentially rooted in the complementarity of the sexes and oriented to procreation. Sexual differences cannot be dismissed as irrelevant to the definition of marriage.⁵⁵

⁵¹ "Pope Laments 'Insult' From Rome's Gay Festival", *Chicago Tribune*, (10.7.2000).

⁵² George Neumayr, "Diabolizing the Pontiff" www.spectator.org (23.5.2010).

⁵³ Matthew D. Staver, *Same-Sex Marriage*, CA: B&H Publishing Group 200.

⁵⁴ www.articles.washingtonpost.com (29.5.2016).

⁵⁵ "Address of His Holiness Benedict XVI to the Bishops of the United States of America" www.vatican.va (20.4.2016).

Pope Benedict XVI in his 2012 Christmas address to the Roman Curia quoted at length an essay by the French Chief Rabbi Gilles Bernheim which took a clear position against gay marriage and denouncing the theory of acquired gender.⁵⁶

The BBC reported that shortly before the resignation of Pope Benedict XVI in February 2013, the Italian media in particular used unsourced reports to suggest that there was a "gay lobby" of clergy inside the Vatican who had been collaborating to advance personal interests, thereby opening the Holy See to potential blackmail, and even to suggest that this may have been one of the factors influencing Benedict's decision to resign.⁵⁷

Pope Francis' Anti-Homosexuality Views

Pope Francis spoke of same-sex marriage as "a weakening of the institution of marriage, an institution that has existed for thousands of years and is 'forged according to nature and anthropology' in a 2010 book co-authored with Jewish Rabbi Abraham Skorka.⁵⁸

On a visit to the United States in September 2015, Pope Francis was reported as having held a private meeting with Kim Davis, a county clerk from Kentucky who had gained international attention after defying a federal court order requiring that she issue gay marriage licenses.⁵⁹ However, the Vatican Press Office issued a statement saying that the Pope did not enter into the details of the situation of Mrs. Davis and his meeting with her should not be considered a form of support for her position in all of its particular and complex aspects.⁶⁰

⁵⁶ "Benoît XVI: "Dan's la lutte pour la famille, l'Homme est en jeu"". *Le Figaro*. (21.12.2012).

⁵⁷ "Pope Francis 'Confirms Vatican Gay Lobby and Corruption,'" *BBC News*. (12.6.2013).

⁵⁸ Edward Pentin, "Pope Repeats that Same-Sex 'Marriage' is 'Anthropological Regression'" www.ncr.com (13.1.2014).

⁵⁹ Ed Payne, Daniel Burke, "Pope's Meeting with Kim Davis not an Endorsement, Vatican says," *CNN* (2.10.2015).

⁶⁰ Jim Yardley, Laurie Goodstein "Pope Francis' Meeting wasn't an Endorsement of Kim Davis's Views, Vatican Says," *New York Times*, (2.10.2015).

Pope Francis also intervened in the national referendum in Slovakia on whether or not to allow same-sex marriage and adoption. In February 2015, he spoke about encouraging everyone to continue their efforts in defense of the family, the vital cell of society.⁶¹ However, critics interpreted the pope's remarks as an encouragement to vote in favour of the referendum limiting rights.⁶² He further addressed Slovenian pilgrims in December to back the family as the structural reference point for the life of society.⁶³ The subsequent referendum voted to remove the right to same-sex marriage previously approved by the country's parliament.⁶⁴

In a 5 March 2014 interview with the Italian newspaper, *Corriere della Sera*, Pope Francis argued that marriage is between a man and a woman. Secular states want to justify civil unions to regulate different situations of cohabitation, pushed by the demand to regulate economic aspects between persons, such as ensuring health care. It is about pacts of cohabitating of various natures, of which I wouldn't know how to list the different ways. One needs to see the different cases and evaluate them in their variety.⁶⁵ The Catholic News Service interpreted the pope's comments as suggesting that the Catholic Church could tolerate some types of non-marital civil unions as a practical measure for the purposes indicated.⁶⁶ However, according to the Holy See's Press Office "civil unions" is a term that in Italy refers to non-religious marriages by the state, and that, in using it, "Pope Francis spoke in very general terms, and did not specifically refer to same-sex marriage as a civil union."⁶⁷

⁶¹ Antonia Blumberg, "Pope Francis Backs Slovakia's Referendum against Same-Sex Marriage, Adoption Rights". *The Huffington Post*, (6.2.2015).

⁶² Ibid.

⁶³ Ibid.

⁶⁴ www.bbc.co.uk/news/world-europe-35147257, (12.6.2016).

⁶⁵ "Transcript: Pope Francis' March 5 interview with Corriere della Sera." *Catholic News Agency*, (30.3.2016).

⁶⁶ www.Catholicnews.com. (20.3.2014).

⁶⁷ Thomas Reese, "Vatican Spokesman Clarifies Pope on Civil Unions" *National Catholic Reporter*, (30.3.2016)

Bishop Charles J. Scicluna of Malta reported that in a private conversation held with Pope Francis in December 2013, he repeated the phrase about same-sex marriage used in the earlier Argentine letter, that it was "an anthropological regression."⁶⁸

Conclusion

I am of the view that the existence of homosexual members and clergy within the Roman Catholic Church is a clear evidence of the complex nature of the homosexual debate. Although the Catholic Church is one of the harshest critics of the homosexual phenomenon, evidence cited above shows that homosexuality is being practiced within its own fold. Therefore, I argue that the phenomenon of homosexuality does not have easy answers from both religious and secular perspectives. However, the Church needs to be involved in a continuous process of reflection over the issue of homosexuality in two ways. First, by theoretically clarifying its theological position on homosexuality. Second, by practically implementing pastoral ministry strategies aimed at helping people who are struggling with homosexuality. The Roman Catholic Church in Malawi has maintained the Vatican's official stance on homosexuality which considers the practice as sinful while reflecting on the pastoral care of persons struggling with homosexuality.

Anglicanism and Homosexuality

The discussion on Anglicanism and homosexuality is pertinent to this study because the first public debate of homosexuality in Malawi started within the Anglican Communion.⁶⁹ The Church of England exported the homosexual debate to African countries where the controversy has raged between missionaries and the indigenous church.⁷⁰ Therefore, this section of the book will discuss both the pro-

⁶⁸ Edward Pentin, "Pope Repeats that Same-Sex 'Marriage' is 'Anthropological Regression'" *National Catholic Register*, (3.1.2014).

⁶⁹ "Malawi Rejects 'Pro-Gay' Bishop," *BBC News*, (2.12.2005).

⁷⁰ Miranda Hassett, *Anglican Communion in Crisis: How Episcopal Dissidents and their African Allies are Reshaping Anglicanism*, Princeton University Press, 2007.

homosexuality and anti-homosexuality responses from the Anglican Church.

Homosexual Clergy in the Anglican Church

Canon Jeffrey John became the first openly gay priest to become a bishopric candidate in the Church of England in 2003.⁷¹ However, he eventually succumbed to pressure to withdraw his name from consideration to be the Bishop of Reading.⁷² Canon Jeffrey John was installed as Dean of St. Albans in 2004.⁷³ This signaled that the Church of England tolerates priests who practice homosexuality.

In the Episcopal Church in the United States, Gene Robinson, was elected and consecrated Bishop of New Hampshire, becoming the first openly gay bishop in the Anglican Communion and in apostolic Christianity.⁷⁴

Mary Douglas Glasspool became the first openly lesbian priest to be elected as a suffragan bishop in December 2009 in the Diocese of Los Angeles. Her consecration took place on 15 May 2010.⁷⁵ Moreover, leaders from 20 Anglican provinces, meeting in Singapore in April 2010 declared their support for the election and intended consecration of Canon Mary Glasspool. This demonstrated a change in the stance of the Anglican Church towards homosexuality.⁷⁶

⁷¹ Jane Shaw, "Conflicts within the Anglican Communion." *The Oxford Handbook of Theology, Sexuality, and Gender*, 2014.

⁷² Michael Ford, *Disclosures: Conversations Gay and Spiritual*, Salt Lake City: Cowley Publications, 2005.

⁷³ Stephen Bates, *A Church at War: Anglicans and Homosexuality*, London: IB Tauris, 2004.

⁷⁴ Ibid.

⁷⁵ Bill Bowder, "Trumpet Blast from the Global South," *Church Times*, (21.4.2010).

⁷⁶ Ibid.

Blessing of Same-Sex Unions by the Anglican Church

In 2002, the Diocese of New Westminster, in the Anglican Church of Canada, permitted the blessing of same-sex unions.⁷⁷

In 2013, some in the Church of England planned a liturgical blessing of gay couples.⁷⁸ Still in 2014, the Church of England's house of Bishops decided against special blessings but allowed more informal kinds of prayer, at the request of the couple [but this should] be accompanied by pastoral discussion of the Church's teaching and [the couple's] reasons for departing from it.⁷⁹ The Rev Andrew Cain, of St. Mary's Church, Kilburn and St. James' Church West, in North London planned to defy the ban and bless same sex marriages.⁸⁰

The Church of England stipulates that same-sex attracted people, who are ordained deacon, priest, or Bishops, are forbidden to marry someone of the same sex and same-sex attracted people who are married to someone of the same sex are forbidden to be ordained.⁸¹ Ben Bradshaw, MP, wanted the position of the Church of England clarified. Specifically, he demanded to know if the Church of England clergy who married a same-sex partner would be disciplined or defrocked.⁸² Gay people, including those in same-sex civil partnership or marriages, are allowed to become clerics but are expected to remain celibate.⁸³

⁷⁷ Christopher Craig Britain and Andrew McKinnon, "Homosexuality and the Construction of 'Anglican Orthodoxy': The Symbolic Politics of the Anglican Communion," *Sociology of Religion*, (2011), pp. 1–3.

⁷⁸ "Church of England Plans Blessings for Gay Couples," www.advocate.com (21.4.2010).

⁷⁹ www.dailymail.co.uk/news/article-2560245/Church-allows-sex-couples... (11.1.2016).

⁸⁰ "London's Rev Andrew Cain to defy same-sex blessings Ban," *BBC News*. (11.1.2016).

⁸¹ "Gay couple blessings ruled out by Church of England bishops," *BBC News*, (21.4.2010).

⁸² "MP urges Church of England clarity on Same-sex Marriage Priests," *BBC News*, (2.5.2010).

⁸³ "David Shariatmadari, Church of England 'Must Accept Actively Gay Clergy,' *The Guardian*, (20.1.2015).

Some Church of England bishops fully accept and embrace gay clergy with partners or spouses in their diocese.⁸⁴ In 2014, Jeremy Pemberton married Laurence Cunnington, thus becoming the first priest in the Church of England to defy the Church's ban on the marriage of gay clergy.⁸⁵

Pro-Homosexuality Responses from the 1998 Lambeth Conference

The 1998 Lambeth Conference passed two pro-homosexual resolutions. The first resolution states that:

There are among us persons who experience themselves as having a homosexual orientation. Many of these are members of the Church and are seeking the pastoral care, moral direction of the Church, and God's transforming power for the living of their lives and the ordering of relationships. We commit ourselves to listen to the experience of homosexual persons and we wish to assure them that they are loved by God and that all baptized, believing and faithful persons, regardless of sexual orientation, are full members of the Body of Christ.⁸⁶

The second resolution states that:

While we are rejecting homosexual practice as incompatible with Scripture, calls on all our people to minister pastorally and sensitively to all irrespective of sexual orientation and to condemn irrational fear of homosexuals, violence within marriage and any trivialization and commercialization of sex.⁸⁷

Pro-Homosexuality Responses by the Anglican Church of Southern Africa

The Anglican Church of Southern Africa (ACSA) says that the Church will not bless same-sex unions, although it would provide loving support and care. However the Church recognizes that people of homosexual orientation are God's children, and says: "we cannot penalize someone for

⁸⁴ "LGBT ministers and clergy". www.changingattitude.org.uk. (11.1.2016).

⁸⁵ "Church of England faces 'crisis' as Gay Priest Weds," Telegraph.co.uk. (12.4.2014).

⁸⁶ justus.anglican.org/resources/Lambeth1998/lambeth.html (4.6.2016).

⁸⁷ Ibid.

something not of his or her own making." Diversity is a creation by the almighty. We need to embrace all of us in our differences and seek to walk together.⁸⁸

In February 2016, bishops of ACSA failed to agree on blessing same-sex couples during a Synod meeting in East London, South Africa. However, they agreed not discriminate against LGBT people or their families.⁸⁹

The bishops further confirmed that all baptized, believing and faithful persons, regardless of sexual orientation, are full members of the Body of Christ, but, the church had not changed its policy on same-sex unions. The Church upholds that marriage is an "exclusive union partnership between one man and one woman" and thus a "partnership between two persons of the same sex cannot be regarded as a marriage."⁹⁰

Thabo Makgoba, Archbishop of Cape Town and Primate of the Anglican Church of Southern Africa, released a letter which expounded the synod's position. He argued that the synod's position has important implications in parishes. For example, he cited same-sex couples who are living in civil unions under South African law who want their children to be baptized and confirmed. He elaborated that the Church was of the view that no child brought for baptism should be refused merely because of the sexual orientation of the parents, and particular care should be taken against stigmatizing not only parents but their children too.⁹¹

Archbishop Emeritus Desmond Tutu's Pro-Homosexuality Responses

Archbishop Emeritus Desmond Tutu is a liberation struggle icon who fiercely opposed the apartheid system of racial discrimination in the Republic of South Africa. He is also an outspoken gay rights activist. He stated that:

⁸⁸ <http://kzncc.blazanor.com/homosexuality-in-south-africa/> (26.4.2016).

⁸⁹ "Southern Africa Anglican Church welcomes gays but won't bless our unions, www.mambaonline.com , and (26.4.2016).

⁹⁰ Ibid.

⁹¹ Ibid.

The Jesus I worship is not likely to collaborate with those who vilify and persecute an already oppressed minority [...]. I could not myself keep quiet whilst people were being penalized for something about which they could do nothing, their sexuality. For it is so improbable that any sane, normal person would deliberately choose a lifestyle exposing him or her to so much vilification, opprobrium and physical abuse, even death. To discriminate against our sisters and brothers who are lesbian or gay on grounds of their sexual orientation for me is as totally unacceptable and unjust as apartheid ever was.⁹²

Tutu has increased his criticism of conservative attitudes to homosexuality within his own church, equating homophobia with racism, saying at a conference in Nairobi that he is "deeply disturbed that in the face of some of the most horrendous problems facing Africa, we concentrate on 'what do I do in bed with whom'".⁹³ He further accused the church of being obsessed with homosexuality and declared: "If God, as they say, is homophobic, I wouldn't worship that God."⁹⁴

Archbishop Desmond Tutu has lent his name to the fight against homophobia in Africa and around the world. He stated at the launching of the book *Sex, Love and Homophobia* that:

Homophobia is a "crime against humanity" and "every bit as unjust" as apartheid." He added that "we struggled against apartheid in South Africa, supported by people the world over, because black people were being blamed and made to suffer for something we could do nothing about; our very skins... It is the same with sexual orientation. It is a given."⁹⁵

Tutu further challenged that he would rather go to hell than go to a homophobic heaven:

⁹² "Archbishop Desmond Tutu, Sermon at Southwark Cathedral," www.jmm.aa.net.au/articles, (11.1.2016).

⁹³ "Tutu Stands up for Gays," *Pink News*, (19.1.2007).

⁹⁴ "Desmond Tutu chides Church for Gay Stance" *BBC*, (18.11.2007).

⁹⁵ Baird, Vanessa;" Sex, Love and Homophobia," www.amnesty.org/en, (12.5.2016).

I would refuse to go to a homophobic heaven. No, I would say sorry, I mean I would much rather go to the other place. I would not worship a God who is homophobic and that is how deeply I feel about this. I am as passionate about this campaign as I ever was about apartheid. For me, it is at the same level.⁹⁶

Tutu's daughter, Rev Canon Mpho Tutu married a woman, Professor Marceline Furth, in a private ceremony in the Netherlands, on 30 December 2015.⁹⁷ This lesbian wedding demonstrated Archbishop Tutu's tolerance of homosexuality, due to the fact that he was in attendance at the wedding ceremony.

This discussion has shown that the Anglican Communion is on the brink of a worldwide schism over the question of homosexuality, with liberals decrying the vilification of gay Christians and conservatives threatening to pull out of the Church unless godly order was restored.

The Lambeth Conference Denounces Homosexuality

In 1998, the 13th Lambeth Conference of Anglican bishops passed two resolutions on human sexuality which are anti-homosexual.⁹⁸ Resolution 1.10 (b) states that:

In view of the teaching of Scripture, upholds faithfulness in marriage between a man and a woman in lifelong union, and believes that abstinence is right for those who are not called to marriage.⁹⁹

Resolution 1.10 (d) states that:

We cannot advise the legitimizing or blessing of same sex unions or ordaining those involved in same gender unions.¹⁰⁰

⁹⁶ "Archbishop Tutu 'would not worship a homophobic God," *BBC News*, (26.7.2013).

⁹⁷ "Mpho Tutu Ties the Knot" www.ewn.co.za/2016/01/01/ (11.1.2016).

⁹⁸ justus.anglican.org/resources/Lambeth1998/lambeth.html (4.1.2015).

⁹⁹ *Ibid.*

¹⁰⁰ justus.anglican.org/resources/Lambeth1998/lambeth.html (4.1.2015).

Anti-Homosexuality Responses to the Appointment of Homosexual Priests

Some quarters of the Anglican Church have made some anti-homosexual responses against the appointments of gay priests. Churches in the Diocese of St. Albans decided that they would withhold contributions until further notice to protest the appointment of Canon Jeffrey John, a gay priest, as the Dean of St. Albans.¹⁰¹ St. Peter and Paul's Church in Cranfield, near Bedford, and Holy Trinity Church, in New Barnet, north of greater London, pledged to withhold money from diocesan funds in protest. St Andrews Church in the Hertfordshire town of Chorleywood also announced that it would withhold funds until further notice.¹⁰²

The Archbishop of Canterbury, Rowan Williams, expressed his concern over the election of a lesbian priest, Mary Douglas Glasspool, to the position of a bishop. He warned that Glasspool's election posed very serious questions not just for the Episcopal Church and its place in the Anglican Communion, but for the Communion as a whole.¹⁰³

I am of the view that the Archbishop of Canterbury's warning was made in view of the potential splits of the worldwide Anglican Communion due to the homosexual debate.

Gay Clergy Risks Losing their Jobs

Gay clergy who enter into same-sex marriage or bless same-sex marriages risk being defrocked and losing their jobs.¹⁰⁴ In 2015, The Most Reverend Dr John Sentamu, Archbishop of York, told a lay preacher, Jeremy Timm, that if he persisted with plans to marry his long-time partner, his license to preach in Anglican churches would be revoked. As of August 2015, an agreement was reached: Timm would complete existing preaching commitments before revocation. Timm

¹⁰¹ Stephen Bates, *A Church at War: Anglicans and Homosexuality*, London: IB Tauris, 2004.

¹⁰² Ibid.

¹⁰³ Lisa Miller, "Mary Glasspool, 'The Lesbian Episcopal Bishop of LA,'" *Newsweek*, (16.4.2010).

¹⁰⁴ "Church of England Clergy could be Defrocked if they Marry Gay Partner" www.huffingtonpost.co.uk/2014/02/15 (11.1.2016).

announced his plans to get married in September 2015 and to leave the Church of England¹⁰⁵ for "*Contemplative Fire*", a dispersed, diverse, and inclusive group that is primarily Anglican.¹⁰⁶

Anglican Communion Suspends the Episcopal Church of the United States (ECUSA)

The Episcopal Church of the United States (ECUSA) is a member church of the worldwide Anglican Communion.¹⁰⁷

The Anglican Communion voted to censure its American branch, the Episcopal Church on 14 January 2016.¹⁰⁸ The Episcopal Church of the United States (ECUSA) was suspended for revising its canons and marriage rites allowing same-sex marriage.¹⁰⁹ The primates' communiqué imposed a disciplinary action:

It is our unanimous desire to walk together. However, given the seriousness of these matters [same-sex marriage] we formally acknowledge this distance by requiring that for a period of three years The Episcopal Church no longer represent us on ecumenical and interfaith bodies, should not be appointed or elected to an internal standing committee and that, while participating in the internal bodies of the Anglican Communion, they will not take

¹⁰⁵ "Gay Anglican preacher forced to 'choose between marriage and ministry'" Telegraph.co.uk. (11.8.2015).

¹⁰⁶ "Anglican preacher quits CofE over gay marriage - Christian News on Christian Today". www.christiantoday.com, (11.6.2016).

¹⁰⁷ "What makes us Anglican? Hallmarks of the Episcopal Church". www.episcopal-church.org. (20.4.2016).

¹⁰⁸ "Kimberly Winston, Episcopal Church Suspended from Full Participation in Anglican communion," <http://religionnews.com>, (30.5 2016).

¹⁰⁹ "The Episcopal Church (United States) at its 2015 triennial General Convention adopted "canonical and liturgical changes to provide marriage equality for Episcopalians." The canonical change eliminated "language defining marriage as between a man and a woman." The "two new marriage rites" contain language that allows "them to be used by same-sex or opposite-sex couples." Episcopal News Service staff, "General Convention wrap-up: Historic actions, structural changes" (July 7, 2015), www.episcopaldigitalnetwork.com/ens/2015/07/07/general-convention-wrap-up-historic-actions-structural-changes, (12.5.2016).

part in decision making on any issues pertaining to doctrine or polity.¹¹⁰

Anti-Homosexuality Responses from the African Anglican Churches

The former Anglican Archbishop Njongonkulu Ndungane of the Anglican Church of Southern Africa expressed publicly his disapproval of same-sex marriage, when it was legalized in South Africa in 2004. He stated that: "As far as we are concerned as a church, our understanding of marriage is between a man and a woman. And as a church, and the Anglican Church in particular, we have said no to same-sex unions."¹¹¹

The Anglican Church of Southern Africa confirmed that the clergy of ACSA are not permitted to bless such unions... nor are they permitted to enter into such unions while they remain in licensed ministry.¹¹²

The Church of Nigeria has continuously opposed the liberal inclinations of the Episcopal Church of the United States, the Church of England, and the Anglican Church of Canada. These liberal inclinations have led to the acceptance of non-celibate homosexuality and non-celibate homosexual clergy.¹¹³ The former primate, Peter Akinola, became a prominent leader of conservatives within the Anglican Communion, calling homosexuality "a perversion of human dignity."¹¹⁴

Peter Akinola threatened that the ordination of the gay bishop Gene Robinson was a measure that could split the Anglican Communion.¹¹⁵ Peter Boyer says that in reaction to the ordination of a gay bishop, the Nigerian Anglican Church declared that it was in "impaired communion"

¹¹⁰ Communiqué from the Primates of the AAnglican Communion," 15 Jan 2016. www.primates2016.org/articles/2016/01/15/communique-primates/, (7.6.2016).

¹¹¹ "Archbishop Njongonkulu of Cape Town declares same-sex marriages unchristian, 9 December 2004," www.changingattitude.org.uk, (4.1.2016).

¹¹² <http://kzncc.blazanor.com/homosexuality-in-south-africa/> (26.4.2016).

¹¹³ Matthews A. Ojo, "Religion and Sexuality: Individuality, Choice and Sexual Rights in Nigerian Christianity." *Humanity Sexuality in Africa beyond Reproduction*, Action Health Incorporated. (2007).

¹¹⁴ Peter Akinola, "Message to *The Nation*," www.anglican-nig.org, (11.1.2016).

¹¹⁵ M. Lacey, LA Goodstein, "African Anglican Leaders Outraged over Gay Bishop in US," *New York Times*. 4.11.2003.

with the ECUSA on 21 November 2003.¹¹⁶ In March 2009, the Nigerian Anglican Church declared itself in full communion with the Anglican Church in North America, a denomination formed by American and Canadian Anglicans who opposed their national churches' actions with regard to homosexuality.¹¹⁷

Conclusion

The discussion on Anglicanism and homosexuality shows a schism, or irreparable rupture, within the Anglican Communion due to the homosexual debate. The homosexual debate in Malawi was precipitated by the rejection of Rev Dr Nick Henderson's election as bishop of Lake Malawi Diocese of the Anglican Church based on allegations that he was homosexual.¹¹⁸ This demonstrates the urgency of the church to critically review its theological and ministerial positions in a bid to enhance unity and serve its clergy and members who are struggling with homosexuality.

Presbyterianism and Homosexuality

The Church of Scotland, which is the "mother church" for Presbyterians worldwide, has its sister churches in Malawi known as the Church of Central African Presbyterian (CCAP). The CCAP has three synods in Malawi: Blantyre, Nkhoma, and Livingstonia. Therefore, the study assumes that the debate on homosexuality in the Church of Scotland has some implications on the homosexual debate in Malawi. Some of the major issues of the debate are discussed below.

Civil Partnerships in Scotland

The Church of Scotland addresses issues of human sexuality within the context of contemporary Scotland. The introduction of civil partnerships in Scotland on 5 December 2005, as a result of the Civil Partnership

¹¹⁶ Peter Boyer, "A Church Asunder," *The New Yorker*, (17.4.2006).

¹¹⁷ Sam Hodges, "Church of Nigeria in full Communion with Anglican Church of North America," *The Dallas Morning News*, (20.3.2009).

¹¹⁸ "Malawi Rejects 'Pro-Gay' Bishop," *BBC News*, (2.12.2005).

Act 2004 (c.33),¹¹⁹ provided legal recognition for same-sex couples. Consequently, same-sex marriages may be considered to be an established feature within the realm of contemporary social norms.¹²⁰

The introduction of civil partnerships for same-sex marriages in Scotland subsequently impacted upon the attitudes of ministers, office bearers, and members of the Church of Scotland.¹²¹ According to a 2011 General Assembly report of the Church of Scotland, findings of a survey on the church's attitude towards same-sex marriages revealed attitudinal change.¹²² For instance, in response to the question: *Should a person in a same-sex relationship be permitted to be an ordained minister within the Church?* 38.2% of "Individual members of Kirk Sessions" responding said: Yes; whilst 56.2% said: No. (With respect to "Individual members of Presbyteries," the figures were, Yes: 35.4% and No: 57.8 %.). Thereafter, in answer to the question: *Should a person in a civil partnership be permitted to be an ordained minister within the Church?* 46.2% of "Individual members of Kirk Sessions" responding said: Yes; whilst 47.0% said: No. (With respect to 'Individual members of Presbyteries', the figures were, Yes: 45.2% and No: 47.3 %.). Further, in answer to the question: *Should a person in a same-sex relationship be permitted to have a leadership role within the Church?* 47.3% of "Individual members of Kirk Sessions" responding said: Yes; whilst 45.2% said: No. (With respect to "Individual members of Presbyteries," the figures were, Yes: 43.3% and No: 47.8 %). Finally, in answer to the question: *Should a person in a civil partnership be permitted to have a leadership role within the Church?* 55.0% of "Individual members of Kirk Sessions" responding

¹¹⁹ www.legislation.gov.uk/ukpga/2004/33/contents (14.6.2016).

¹²⁰ The General Register Office for Scotland records the following figures for the number of Civil Partnerships registered in Scotland: 2005 – 84; 2006 – 1047; 2007 – 688; 2008 – 525; 2009 – 498; 2010 – 465; 2011 – 554 (2011 – Provisional). The General Register Office for Scotland records the following figures for the number of Marriages 28,480; 2011 – 29,135 www.groscotland.gov.uk/statistics, (14.6.2016).

¹²¹ "Theological Commission on Same-Sex Relationships and the Ministry May 2013," www.churchofscotland.org.uk, (30.5.2016).

¹²² *Ibid.*

said: Yes; whilst 37.8% said: No. (With respect to "Individual members of Presbyteries," the figures were, Yes: 50.1% and No: 41.7 %).¹²³

The above-mentioned statistics indicate that the provision for civil partnerships has significantly impacted upon the perception of persons in same-sex relationships within the Church of Scotland. Therefore, the reality of civil partnerships in Scotland in general and in the Church of Scotland in particular demanded the church's theological and pastoral response.¹²⁴

Pro-Homosexuality (Revisionist) Responses by the Church of Scotland

Pro-homosexuality responses by the Church of Scotland are known as Revisionist approaches. The "Revisionist" stance emerges from a variety of perspectives and attitudes. Some have sought to examine the issue as participants in same-sex relationships, and are seeking to discern resonances with their experience in Scripture and church history. Others approach the issue because of the questions posed to the Church by many in our society who are seeking a deeper understanding. Others, from their reading of Scripture, have found themselves dissatisfied with the interpretations that have been offered, and are wrestling further with texts and contexts.¹²⁵

"Revisionism" implies a careful or critical examination or perusal with a view to correcting or improving. It is a revisiting of the issue, by exploring again text and context. The root of "revision" means to see again. While such a revisiting may lead to reaffirming a previous understanding, it can also lead to embracing a different understanding and approach, and to a change of direction.¹²⁶

¹²³ "Reports to the General Assembly of the Church of Scotland 2011, (Special Commission on Same-Sex Relationships and the Ministry) 23/9-23/10." www.churchofscotland.org.uk, (30.5.2016).

¹²⁴ Theological Commission on Same-Sex Relationships and the Ministry May 2013, www.churchofscotland.org.uk, (30.5.2016).

¹²⁵ Ibid.

¹²⁶ Ibid.

Proponents of "Revisionism" have revisited the Scriptures and Christian traditions, seeking guidance on the church's approach to homosexuality. They have noted the diversity of responses by Christians to current developments regarding sexual practice, particularly in respect to homosexual orientation and lifestyle.¹²⁷

Proponents of "Revisionism" have argued that the Church of Scotland has an opportunity and a responsibility to affirm gay and lesbian ministers, elders, deacons, and members. The Church has been well served by ministers, elders, deacons and members who are gay or lesbian. In response to the call of God which has been addressed to them, and affirmed by the Church and by congregations through normal processes of discernment, they have served Church and community with just the same enthusiasm and passion for the Gospel as have other people exercising these ministries and offices. Their wisdom and experience has benefited the Church, and should continue to do so. For those who are in a committed, faithful same sex relationship, sharing a mutuality of giving and receiving, we would argue that such relationships should be recognized when a civil partnership has been entered.¹²⁸

Liturgy for Recognition and Blessing of a Civil Partnership

In pursuant of the above mentioned "Revisionist" position, the Church of Scotland formulated a special liturgy for recognition and blessing of same-sex civil partnerships.

The Church of Scotland's General Assembly recommends the registration of a civil partnership followed by a Service of Recognition and Blessing. This would be a religious service making explicit what was implicit in the couple's decision to enter into a civil partnership; marking and

¹²⁷ Reports to the General Assembly of the Church of Scotland 2009, (Working Group on Human Sexuality) 4/70-4/72: "Late twentieth century developments." www.churchofscotland.org.uk, (30.5.2016).

¹²⁸ Theological Commission on Same-Sex Relationships and the Ministry May 2013, www.churchofscotland.org.uk, (30.5.2016).

celebrating the commitment they have already made and asking God's blessing on them in their life together.¹²⁹

For the sake of equity, since a civil marriage is acceptable for heterosexual ministers with or without a religious blessing, the religious service would not be compulsory for those in a civil partnership seeking ordination, but it is to be hoped that most would be pleased to take advantage of this opportunity to affirm their commitment and seek God's blessing in a service of worship.¹³⁰

The Service of Recognition and Blessing may take place during public worship on a Sunday, or on a separate occasion. The two essential elements which must be included are: (1) a statement about the nature of a civil partnership and its implications for Christian partners; (2) an affirmation by the couple of their intention that the partnership should be lifelong, faithful and exclusive.¹³¹

Conclusion

Proponents of "Revisionism" are of the view that time has come for the Church of Scotland to fully embrace gays and lesbians in the life and mission of the church. Contemporary developments in Scotland and within the Church of Scotland compel the church to urgently implement ministerial strategies that include rather than exclude people who practice homosexuality.

Anti-Homosexuality Responses by the Church of Scotland

Anti-homosexuality responses from the Church of Scotland are termed as the "Traditionalist" case. The main objective of the "Traditionalist" advocates is to be faithful to the Church's traditional teaching on marriage which is compatible with Scriptures. This position considers homosexuality as sin; hence, should not be tolerated by the Church.¹³²

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

The Special Commission on Same-sex Relationships and Ministry of the Church of Scotland held that the "*Traditionalist*" position continue to be the position of the Church of Scotland. It stated that:

We are aware that some have argued that the Church has not taken a formal position on homosexual practice. While this may be so, we are of the view that the Church has never formally departed from the traditional teaching of the wider church on homosexuality and our debates have proceeded on that basis.¹³³

Traditionalist's Response to Revisionism

Proponents of the "Traditionalist" approach have responded to the arguments made by proponents of Revisionism. The "Traditionalists" reject all arguments which seek to justify or condone homosexual acts, since they stand contrary to the clear and universal teaching of Scripture.¹³⁴

The "Traditionalists" gave two main arguments for rejecting the "Revisionist" case. First, homosexuals claim: "this is the way God made me" and, on that basis, insists on the right to express their sexuality in a same-sex relationship. The same kind of argument could be used by heterosexuals to justify a promiscuous lifestyle. Simply the possession of certain sexual desires does not imply the right to express these, especially in relationships which Scripture condemns. The honourable choice of celibacy by those of homosexual orientation is the appropriate response to homosexual desire just as celibacy or a faithful marriage relationship is the appropriate response of heterosexuals to heterosexual desires.

Second, it is argued that Paul knew nothing of long-term, stable homosexual relationships and, if he were living today, the existence of such relationships, plus modern scientific knowledge would have persuaded him that he had been wrong in his teaching on homosexuality. This

¹³³ Reports to the General Assembly of the Church of Scotland 2011, (Special Commission on Same-Sex Relationships and the Ministry) 23/28 n.41. www.churchofscotland.org.uk, (30.5.2016).

¹³⁴ Ibid.

argument is misguided both historically and theologically. However, historically, it is clear that stable homosexual relationships were well known in Roman times and theologically, this argument undermines the fact that God's knowledge is comprehensive, such that his revelation, while never complete, is always true.¹³⁵

Traditionalist's Affirmations on Homosexuality

Proponents of "Traditionalism" have made four affirmations on homosexuality: (1) The Scriptures condemn homosexual acts in unequivocal and forthright terms. Such acts cannot, therefore, be regarded as acceptable behaviour by those who claim to be Christians. (2) Everyone on the Theological Commission (on both sides of this debate) agrees that there is not one positive reference to homosexuality in the entire Bible. This agreement is significant. (3) The Scriptures have nothing to say about homosexual orientation and there is no barrier to a celibate homosexual being accepted for Christian service. (4) The Church, in faithfulness to God's Word, must provide pastoral care for those who struggle with homosexual desires but must also discipline those who flagrantly disobey God by engaging in homosexual acts.¹³⁶

Proponents of "Traditionalism" point out that the Church of Scotland, in partnership with orthodox Christianity from the very beginning, has insisted that sexual acts belong in a relationship between one man and one woman joined together in marriage.¹³⁷

The Church has only ever taught that marriage is the union of a man and a woman. Scriptural references to marriage, whether literal or metaphorical, all operate under this understanding. Furthermore the point is established within the Reformed tradition of the Church, not least in its subordinate standards. The Church sees itself as part of the Catholic or universal Church

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

within which there is agreement, across confessional divides, that marriage is between one man and one woman.¹³⁸

Therefore, heterosexual marriage and not homosexual marriage ought to remain the official position of the Church of Scotland.

Conclusion

Supporters of the Traditionalist viewpoint wish the whole Church to be required to adopt their position while supporters of the Revisionist approach want to be fully accepted in the life and mission of the Church. This demonstrates that there is no consensus within the Church of Scotland on the issue of homosexuality.

The Church of Scotland is a mother church to the Church of Central African Presbyterian (CCAP) in Malawi. Thus, the position of the Church of Scotland influences the homosexual debate in Malawi within the CCAP. As noted in Chapter 3 of this dissertation, the Livingstonia and Nkhoma Synods of the CCAP in Malawi have adopted the "Traditionalist" view while the Blantyre Synod of the CCAP exemplifies a "Revisionist" view and some of its ministers have issued pro-homosexual statements.

Pro-Homosexuality Responses from the Metropolitan Community Church (MCC)

The Metropolitan Community Church (MCC) is a queer church which was started in the USA. Queer Churches are Christian denominations or congregations that fully embrace Lesbian, gay, bisexual, transgender (LGBT) individuals by not considering homosexuality as sinful.¹³⁹ Some are composed mainly of LGBT members while others also include non-LGBT members but have specific programs to welcome LGBT members.¹⁴⁰

¹³⁸ www.actsparl.org/official-responses/church-of-scotland, (6.6.2016).

¹³⁹ G. B. Chase, "Robert Goss, Jesus Acted Up: A Gay and Lesbian Manifesto," *Christian Scholars Review* 26 (1997), pp. 573-573.

¹⁴⁰ Ibid.

The Metropolitan Community Church (MCC) also known as the Universal Fellowship of Metropolitan Community Churches (UFMCC) is an international Protestant denomination which has a specific outreach to LGBT families and communities.¹⁴¹

The Metropolitan Community Church sees its mission being social as well as spiritual by standing up for the rights of minorities, particularly those of LGBT people. It has been a leading force in the development of queer theology and support for same-sex marriage.¹⁴² In other words, MCC is influenced by pro-gay rights advocacy in both its theology and ministry.

Rev Troy Perry,¹⁴³ the founder of the Metropolitan Community Church, was defrocked in the early 1960s as a clergyman by a Pentecostal denomination because of his homosexuality. He spent the next several years struggling to reconcile his sexuality and his Christian spirituality.¹⁴⁴ In 1968, Troy Perry was stunned when his homosexual lover Benny announced that their relationship was over. In his desperation and depression Perry attempted suicide. Following the failed suicide attempt, Perry experienced a renewed sense of spirituality. He began to pray again. And he was perplexed by the words of a stranger who prophesied, "God has a ministry for you. You are going to pastor a church." At that time, that was far from Troy Perry's mind.¹⁴⁵ The first MCC service took place on October 6, 1968 in Rev Troy Perry's living room and was attended by 12 people.¹⁴⁶

¹⁴¹ Jenell Williams Paris and Rory E. Anderson, "Faith-based Queer Space in Washington, DC: The Metropolitan Community Church-DC and Mount Vernon Square," *Gender, Place and Culture: A Journal of Feminist Geography* 8.2 (2001), pp. 149-168.

¹⁴² Mark D. Jordan, "Religion trouble." *GLQ: A Journal of Lesbian and Gay Studies* 13.4 (2007), pp. 563-575.

¹⁴³ Troy Perry, *The Lord Is My Shepherd and He Knows I'm Gay*, Berkshire: Nash Publishing, 1972.

¹⁴⁴ <http://mccchurch.org/overview/history-of-mcc/> (29.3.2016).

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

Rev Troy Perry performed the first public same-sex marriage in the United States in Huntington Park, California in 1969.¹⁴⁷ Michael Warner recounts that Rev Troy Perry filed the first lawsuit in the U.S.A. seeking legal recognition for same-sex marriages in 1970, when same-sex marriage was illegal in the U.S.A. Although he lost the lawsuit; nevertheless, it launched the debate over marriage equality in the U.S.A.¹⁴⁸

The Metropolitan Community Church has also performed the first church-based weddings for same-sex couples in the United Kingdom.¹⁴⁹ Today, MCC congregations around the world perform more than 6000 same-sex union/marriage ceremonies annually.

Accordingly, I am of the opinion that queer churches provide spiritual nourishment and care to the lives of LGBT Christians who are discriminated in other conservative Christian churches.

Conclusion of the Homosexuality Debate in Christianity

In the debate on homosexuality, it has been observed that both pro-homosexuality and anti-homosexuality views are expressed by the church. However, the pro- homosexuality attitude has not influenced the church in Malawi because of the prevailing cultural attitude against homosexuality. The church in Malawi at present is anti-homosexual.

This discussion demonstrates that the church should urgently re-evaluate its wholistic mission of reaching out to the lost and discipling the found (Mark 16:15-20; Matthew 28:19-20). This can be done by implementing corresponding ministry strategies in view of the on-going homosexual debate.

I am of the opinion that a gap exists between the church's official theology and grassroots reality. Some of the churches are not aware of

¹⁴⁷ Leonard, Arthur S. "Going for the Brass Ring: The Case for Same-Sex Marriage." (1996).

¹⁴⁸ Michael Warner, "Normal and Normaller: Beyond Gay Marriage." *GLQ: A Journal of Lesbian and Gay Studies* 5.2 (1999), pp. 119-171.

¹⁴⁹ "First Church Wedding for Gay Couple is Held in UK," *The Guardian*, (14.4.2014).

the fact that some of their members are homosexuals because it's difficult for them to disclose their sexual orientation for fear of scandal. Consequently, the church fails to give a proper pastoral response to homosexual members.

Progression of the Homosexuality Debate in Islam

As noted in Chapter 2, Muslims in Malawi, who are officially represented by the Muslim Association of Malawi (MAM), have an anti-homosexuality attitude. This section of the study will discuss both pro-homosexuality and anti-homosexuality responses.

Pro-Homosexuality Responses in Islam

Some Muslims have made some pro-homosexuality contributions to the homosexuality debate which are discussed below.

The Notion that the Qur'an doesn't Condemn Homosexuality

Some Muslim scholars such as Mustafa Akvol argue that the average conservative Muslim takes the Qur'anic narrative of Prophet Lut as a justification to stigmatize gays, but they say that there is an important question that deserves consideration: "Did the people of Lot receive divine punishment for being homosexual, or for attacking Lot and his heavenly guests?"¹⁵⁰ The more significant nuance is that while the Quran narrates this divine punishment for Sodom and Gomorrah, it decrees no earthly punishment for homosexuality.¹⁵¹

Scott Siraj al-Haqq Kugle, a contemporary Islamic scholar argues for a different interpretation of the Lot narrative focusing not on the sexual act but on the infidelity of the tribe and their rejection of Lot's prophethood. In its narrative of Lot, the Qur'an could be interpreted as condemning lust rather homosexuality.¹⁵² In so doing, he dismisses the

¹⁵⁰ Mustafa Akvol, "What Does Islam say about being Gay?" *New York Times*, (28.7.2015).

¹⁵¹ Ibid.

¹⁵² Scott Kugle, *Homosexuality in Islam*, Oxford, England: Oneworld Publications, 2010.

gravity of the sin of homosexuality in the narrative and suggests that the Qur'an doesn't condemn homosexuality.

The Qur'an does not even mention the word "homosexuality." It does not refer to gays, lesbians, or bisexuals. In fact, scholars had to come up with a term for homosexuality in Arabic. They came up with a phrase "*al-shudhudh al-jinsi*," that means "sexually rare or unusual." This means that if the Qur'an had mentioned homosexuality by name, scholars would have simply used that term.¹⁵³

The words "homosexuality" and "homosexual" do not appear in the Qur'an at all; therefore, the Qur'an must be read in a different way if we want to find out what the Qur'an can tell us about homosexuality. If we insist on reading the Qur'an literally, we can only say "The word 'homosexuality' doesn't appear in the Qur'an; therefore the Qur'an tells us nothing about the subject."¹⁵⁴

The Qur'an Approves Pederasty

The distinction between pederasty (sex with boys) and sodomy (penetration of "males") was commonly, albeit not universally, maintained throughout the ancient world. It survived throughout most of the history of Islam until at least the nineteenth century. Apparently, boy-love was considered okay by many people because, like "natural eunuchs," adolescent boys were also thought to lack the "desire/skill that belongs to adult males" (sexual potency with women or at any rate fertility).¹⁵⁵

The Qur'an itself gives support to pederasts in its glimpses of paradise:

And they shall have boys who will walk around among them, as if they were hidden pearls (Qur'an 52:24).

¹⁵³ Scott Siraj al-Haqq Kugle, "Sexuality, Diversity, and Ethics in the Agenda of Progressive Muslims," www.mpvusa.org/sexuality-diversity, (4 .5.2016).

¹⁵⁴ Ibid.

¹⁵⁵ Mark Brustman, "Queer Sexuality and Identity in the Qur'an and Hadith," www.well.com/~aquarius/Qurannotes.htm, (27.4.2016).

And boys never altering in age will circulate among them, when you see them you will count them as scattered pearls (Qur'an 76:19).

And they shall have immaculate partners in [the gardens] ... (Qur'an 2:25).

And they shall have immaculate partners in them ... (Qur'an 4:57).

These Qur'anic verses have been interpreted by pro-homosexual Muslims as rendering support to pederasty which is glorified as one of the blessings conferred upon men who enter into paradise. Moreover, these Qur'anic texts have also contributed to the culture of Paedophilia in the world of Islam due to a prohibition on homosexuality and premarital sex with women.¹⁵⁶

The Story of Lut is not about Sexual Desire

The behaviour of the men of Sodom does not express sexual desire because the Qur'an says that the men of Sodom wanted to have sex with the visiting angels by force. This is an example of rape, not an example of sexual desire. Rape is about power. It is used to coerce, control or punish the victim.¹⁵⁷ Although Scott Kugle argues that the story of Lot does not express sexual desire but rape, we are of the view that even rape is motivated by sexual desire.

In two hadiths of the Prophet Muhammad there is support for this understanding of the story of Lut. In one of the hadith, the Prophet Muhammad asked the archangel Jibra'il (Gabriel) why and how the people of Lut were destroyed. Jibra'il responded that they did not clean themselves after using the bathroom or having sex, they did not share their food, and they were covetous (wanting things that belonged to others) and stingy. In another hadith, someone asked the Prophet

¹⁵⁶ Nemat Sadat, "The Roots of Pederasty in Afghanistan and Islam," 22.9.2015, <http://nematsadat.blogspot.com/2015/09/who-will-protect-boys-abused-by.html>, (27.4.2016).

¹⁵⁷ Scott Siraj al-Haqq Kugle, "Sexuality, Diversity, and Ethics in the Agenda of Progressive Muslims," www.mpvusa.org/sexuality-diversity, (4.5.2016).

Muhammad about the penalty for stinginess and the Prophet told the story of the people of Lut.¹⁵⁸ In other words, this suggests that the story of Lot is about hospitality and not homosexuality.

Based on this reading, the story of Lut can instruct Muslims to: (1) follow the example set by the Prophet Lut of hospitality, generosity and protection of people who are vulnerable, such as travellers; (2) avoid stinginess and greed; (3) condemn rape and speak out against any use of sexual acts to coerce or control; and (4) uphold and respect relationships based on consent, fairness, mutual support and love for one another.¹⁵⁹

The Notion that the Hadiths don't have Authenticity

The real Islamic basis for punishing homosexuality is the hadiths, or sayings, attributed to the Prophet Muhammad. The same is true for punishments on apostasy, heresy, impiety, or "insults" of Islam: None come from the Quran; all are from certain hadiths.¹⁶⁰ The hadiths were written down almost two centuries after the prophet lived, and their authenticity has been repeatedly questioned, as early as the ninth century by the scholar Imam Nesai, and they can be questioned anew today. Moreover, there is no record of the prophet actually having anyone punished for homosexuality.¹⁶¹

Some progressive Islamic thinkers in Turkey, such as Ihsan Eliacik, argue that what is condemned in the story of Lot is not sexual orientation but sexual aggression. People's private lives are their own business, so the public Muslim stance should be to defend gays when they are persecuted or discriminated against, because Islam stands with the downtrodden.¹⁶²

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Mustafa Akvol, "What Does Islam say about being Gay?" *New York Times*, (28 .7.2015).

¹⁶¹ Ibid.

¹⁶² Ibid.

There is a solid basis in Islam for respect and acceptance of diversity, including sexual diversity. Although historically many Muslim law-makers forbade homosexual acts, it is important to remember that Islamic law (Shariah) is not the word of God. Islamic law is the result of reasoning by law-makers, so the law is made by human beings. That doesn't mean Islamic law is not important for Muslims, but it does mean that it is not a perfect reflection of what God wants for human beings.¹⁶³ Many Muslims do not accept homosexuality because of prejudice or sexism—and many jurists share these views. As a result, it is important to continue to re-examine the Shariah to better understand the true meaning of the Qur'an and the example of the Prophet Muhammad. By re-examining the principles of Shariah, scholars—along with other believers—can help recover its original purpose: to protect civil liberties, promote human rights and help people lead more ethical lives.¹⁶⁴

Islamic Gay Rights Movements

Faisal Alam, a Pakistani American, founded the Al-Fatiha Foundation in November 1997 through a "listserv" (internet-based email discussion group). The First International Retreat for LGBT Muslims was held in Boston, Massachusetts, USA, in October 1998. More than 40 participants attended representing thirteen ethnicities and nationalities, including four international participants who came from South Africa, Canada, Belgium and the Netherlands. At the end of the three-day retreat participants formally decided to form an international organization in order to address the specific issues and problems facing the "gay" Muslim community. Al-Fatiha, Arabic for "The Opening," which was the theme of the retreat was thus adopted as the name of the organization to be established.¹⁶⁵

¹⁶³ Tynan Power, "Sexual Diversity in Islam: Is there Room in Islam for Lesbian, Gay, Bisexual and Transgender Muslims?" www.mpvusa.org/sexuality-diversity, (3.5.2016).

¹⁶⁴ Ibid.

¹⁶⁵ Joseph Andoni Massad, "Re-orienting desire: The Gay International and the Arab World." *Public Culture* 14.2 (2002), pp. 361-385.

The Al-Fatiha Foundation is an international organization dedicated to Muslims who are lesbian, gay, bisexual, and transgendered, those questioning their sexual orientation or gender identity, and their friends. Al-Fatiha's goal is to provide a safe space and a forum for LGBTQ Muslims to address issues of common concern, share individual experiences and institutional resources. The Al-Fatiha Foundation aims to support LGBTQ Muslims in reconciling their sexual orientation or gender identity with Islam. Al-Fatiha promotes the Islamic notions of social justice, peace, and tolerance through its work, to bring all closer to a world that is free from injustice, prejudice, and discrimination.¹⁶⁶

Ludovic-Mohamed Zahed, a gay Islamic scholar and founder of the group 'Homosexual Muslims of France' set up a prayer room in Paris. The press described the prayer room as the first gay-friendly mosque in Europe.¹⁶⁷

Zahed argues that many gay Muslims don't want to be ostracized because they wear earrings or because they're effeminate or they're transgender, something that's pretty obviously rejected in many mosques in France. Hence, the need to create a more "inclusive" place for gay, lesbian and transgender Muslims.¹⁶⁸

Zahed is of the view that Islam has nothing to do with homosexuality. Islam is not a totalitarian fascist identity. Islam should not be used to justify people's prejudices and try to control the sexuality and gender of individuals.¹⁶⁹

The contemporary debate on homosexuality in Islam is not about legalizing sex outside of traditional marriage (*nikah*). The Supreme Court's decision in the case of *Lawrence v. Texas*,¹⁷⁰ effectively legalized consensual sex among adults and brought a sexual revolution in

¹⁶⁶ www.tegenwicht.org/16_imams/al_fatiha_en.htm (26.4.2016).

¹⁶⁷ Robin Banerji, "Gay-friendly 'Mosque' opens in Paris," *BBC News*, (30.11.2012).

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ A Texas law criminalizing consensual, adult homosexual intercourse violates the constitution, <https://supreme.justia.com/cases/.../case.htm> (26 April 2016).

society.¹⁷¹ Moreover, considering that most Muslims have no problem extending full human rights to those who live together in "sin" (both homosexuality and sex outside marriage is referred to as indecent "*fahisha*" in Islamic law), it seems hypocritical to deny fundamental rights to same-sex couples. Therefore, the homosexual debate in Islam is about making sure that all citizens have access to the same kinds of public benefits.¹⁷²

Anti-Homosexuality Responses from Islam

Abū 'Abdullāh Muhammad ibn Idrīs al-Shāfi'ī, a Muslim jurist, who lived from 767 — 820 AD (150 — 204 AH) says that traditional schools of Islamic law based on Qur'anic verses and the hadith consider homosexual acts as sin and a punishable crime.¹⁷³

The Quran condemns homosexuality in its narration of the story of Prophet Lut which is referred to in multiple places within the Qur'an (Qur'an 7:80-81; 26:165; 27:54; 29:28).¹⁷⁴ Al-Munajjid argues that the conservative Islamic position on homosexuality considers it as a one of the greatest of crimes, the worst of sins and the most abhorrent of deeds, and Allah punished those who did it in a way that He did not punish other nations.¹⁷⁵

Islam is clear in its prohibition of homosexual acts. Islamic scholars cite these reasons for condemning homosexuality, based on teachings of the Qur'an and Sunnah: (1) It clashes with the "natural" order in which God created human beings; (2) It brings destruction of the family and

¹⁷¹ Robin Banerji, "Gay-friendly 'Mosque' opens in Paris," *BBC News*, (30.11.2012).

¹⁷² Ibid.

¹⁷³ Mohammad Fadel, "The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law." *The Canadian Journal of Law and Jurisprudence* (2014).

¹⁷⁴ Mohammad Ali Zaini, www.muslimvibe.com (10.10.201).

¹⁷⁵ Al Munajjid, "The Punishment for Homosexuality, Islam Q & A, Fatwa No. 38622," <https://islamqa.info/en/38622>, (22.4.2016).

the institutions of marriage; and (3) It leads people to ignore God's guidance in other areas of life.¹⁷⁶

The term homosexuality has got negative connotations in Islamic terminology. It is alternatively called "*al-fahsha*" (an obscene act), "*shudhudh*" (abnormality), or "*amal qawm Lut*" (behaviour of the People of Lut).¹⁷⁷ Islam teaches that believers should neither participate in nor support homosexuality.

Conclusion on the Homosexuality Debate in Islam

This discussion has demonstrated that homosexuality is considered as sin and a punishable crime both in the Qur'an and the Hadith. The conservative Islamic view on homosexuality is expressed in Malawi by the Muslim Association of Malawi (MAM).¹⁷⁸ However, there are some liberal Muslims who believe that homosexuality is not sin and can be practiced by faithful followers of Allah. The Islamic pro-homosexual response in Malawi was expressed by Sheikh Ali Tambuli Mdala who called for the inclusion of gays and lesbians into Malawian society.¹⁷⁹ Pro-homosexual Muslim scholars are influenced by pro-gay rights movements and the desire to make Islam relevant due to the prevalence of homosexuality in the contemporary world. This fact demonstrates that it is difficult to reach consensus in the homosexual debate. Divergent views on homosexuality are present even in some world religions like Islam.

Conclusion

This Chapter has demonstrated that the two biggest world religions, Christianity and Islam have not been spared from participating in the

¹⁷⁶ "Homosexuality in Islam," <http://islam.about.com/od/islamsays/a/homosexuality.htm>, (30.5.2016).

¹⁷⁷ Ibid.

¹⁷⁸ Zawadi Chilunga, "Kill the Gays! Penalty Proposed by Muslim Association of Malawi," *Nyasa Times*, (17.2.2014).

¹⁷⁹ "Malawi Muslim Group Condemns Sheikh Tambuli, Gay Campaigners," *Nyasa Times*, (24.10.2014).

homosexual debate. Both religions have got views that are either for or against the phenomenon of homosexuality. Pro-homosexual views are influenced by gay rights movements and the desire to make religion relevant to the prevalence of homosexuality in the contemporary world.

In view of this development, it is obvious that consensus in the homosexual debate will not be reached by the various religious players in both Christianity and Islam. Hence, it is important to provide possible solutions to the homosexual debate.

Chapter 8: A Critical Analysis

People's participation in the homosexuality debate in Malawi and internationally has generated two main arguments. On the one hand, the majority of Malawians and other people worldwide are arguing against the homosexual phenomenon. On the other hand, a minority is arguing for the homosexual phenomenon. These two deviated arguments on homosexuality in Malawi and elsewhere in the world have created an impasse in the on-going debate since each side is not willing to compromise its position. As a result, people are asking the question: "What is the future of the homosexual debate in Malawi?" Therefore, this chapter presents a critical analysis of findings from both arguments in the previous chapters with the aim of projecting a future for the homosexual debate in Malawi and the entire world.

Divergent Definitions of the Term "Homosexuality" and the Homosexual Debate

Chapter 1 of this book has shown that there is no consensus on the definition of "homosexuality." The term "homosexual" can be understood at least in four ways. First, it is used as an adjective describing emotional and erotic attraction to persons of one's own sex, as in "homosexual orientation." Second, it is used as a noun describing persons emotionally and erotically attracted to their own sex, whether or not they engage in sexual acts. Third, it is used in a principally conservative Christian definition as an adjective describing a person who engages in same-sex practice or as an adjective describing anything related to same-sex practices. Fourth, it is used in a principally conservative religious definition as a noun describing a person who engages in same-sex practice.¹⁸⁰ Hence, the fact that most people in the world use the first and second definitions while conservative religious groups use the third and fourth definitions exemplifies that there is no consensus in regard to an understanding of the terms related to homosexuality.

¹⁸⁰ <http://glow.cc/faq/terms-and-definitions/>, (2.5.2016).

The term "homosexuality" is also used as a noun in two ways. First, it refers to a condition of being emotionally and erotically attracted to persons of one's own sex, whether or not this attraction is acted out sexually. Second, it is used to refer to sexual activity between persons of the same sex. The second usage is no longer used by society at large but is common among conservative Christians, who make no distinction between sexual orientation and sexual behaviour.¹⁸¹ Most people in the world use the first definition while conservative religious groups use the second definition to understand homosexuality which essentially does not differentiate between sexual orientation and homosexual behaviour. This further validates the assertion that there is no consensus in understanding the term "homosexuality," consequently generating pro-homosexual and anti-homosexual responses.

Pro-Homosexuality Responses

The apparent lack of consensus concerning the definition of the term "homosexuality" generates some pro-homosexuality responses in the homosexuality debate. For instance, gay rights advocates understand homosexuality in two ways: first as a sexual orientation and second as a sexual behaviour or practice while the latter understand homosexuality as a sexual behaviour or practice. According to Human Rights Education Associates (HREA), sexual orientation is different from sexual behaviour because it refers to feelings and self-concept. Persons may or may not express their sexual orientation in their behaviours.¹⁸² Thus, the main principles guiding the rights approach on sexual orientation relate to equality and non-discrimination.

Human rights organizations fighting for LGBT rights in Malawi like CEDEP and CHRR, seek to ensure social justice and to guarantee the dignity of lesbians, gays, bisexuals, and transgender citizens.¹⁸³ Thus, proponents of human rights articulate pro-homosexual responses because of their

¹⁸¹ <http://glow.cc/faq/terms-and-definitions/>, (2.5.2016).

¹⁸² www1.umn.edu/humanrts/edumat/studyguides/sexualorientation.html (2.5.2016).

¹⁸³ Frank Namangale, "Homosexual Laws under Microscope," *The Nation*, (9.11.2013).

view that sexual orientation is an intrinsic part of an individual's humanity. As such, individuals who have a homosexual sexual orientation should be free to express it in homosexual behaviour because as human beings they are entitled to human rights. In other words, to deny them the expression of homosexual behaviour which springs up from their sexual orientation is tantamount to denying them their humanity. These definitions of homosexuality have influenced some progressive religious groups who advocate for homosexuality in Malawi and world-wide.

Anti-Homosexuality Responses

Governments, conservative religious groups, and traditional leaders in Malawi and elsewhere articulate anti-homosexual attitudes based on their understanding of the definition of the term "homosexuality" as homosexual behaviour or practice.

For example, the Malawi Government's understanding of the term "homosexuality" demonstrates the lack of consensus regarding the definition of the term homosexuality. Section 153 and 154 of the Penal Code of Malawi understand homosexuality as an "unnatural"¹⁸⁴ sexual behaviour which is "against the order of nature."¹⁸⁵ In this way, the government's understanding of homosexuality is limited to homosexual practice and does not in any way consider how homosexual practice is related to issues of sexual orientation. Thus, the criminalization of homosexuality in Malawi is based on homosexual behaviour and not on homosexual orientation.¹⁸⁶

The Malawi Government's understanding of homosexuality implies an anti-homosexual response which contributes to the already existing divisions in society regarding the phenomenon of homosexuality. Very few Malawians are pro-homosexual while the majority of Malawians

¹⁸⁴ www.icrc.org/ihl-nat.../Constitution%20Malawi%20-%20EN.pdf (2.5.2016).

¹⁸⁵ Ibid.

¹⁸⁶ The Malawi Penal Code criminalizes homosexuality in the following sections: Section 137A, Section 153, Section 154, and Section 156. www.icrc.org/ihl-nat.../Constitution%20Malawi%20-%20EN.pdf (2.5.2016).

are anti-homosexual.¹⁸⁷ Consequently, conservative religious people and traditional leaders are toeing the government's line of thought in condemning homosexual practice in Malawi. That is why they have consistently implored the government to maintain the laws that criminalize homosexual behaviour. They are also encouraging the government not to bow down to foreign pressure to decriminalize homosexuality. Thus, religion and culture are some of the two factors that hinder the legalization of homosexuality in Malawi.¹⁸⁸ Also, faith leaders and traditional leaders expressed their anger against a planned visit to Malawi by a US envoy on homosexuality when they were side-lined in the talks because of their anti-homosexual stance. Inkosi ya Makosi M'mbelwa V of Mzimba argued that traditional leaders are custodians of tradition and culture and should not be sidelined when dealing with the issue of homosexuality in Malawi because they represent approximately 17 million people.¹⁸⁹

Conclusion

The lack of consensus on the definition of the term "homosexuality" has dichotomized the homosexual debate in Malawi and worldwide into two opposing camps. On one hand, gay rights activists, liberal religious people and a small population of Malawians and people in other nations who practice homosexuality are holding the pro-homosexual position. They are arguing for the decriminalization of anti-homosexual laws. On the other hand, three different groups holding the anti-homosexual position are: the governments, conservative religious people, and traditional leaders who are arguing for the continued criminalization of homosexuality.

¹⁸⁷ Suzgo Khunga, "A Study Finds Malawi has 40 000 Gays," *The Nation*, (26.2.2015).

¹⁸⁸ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2010.

¹⁸⁹ "Malawi Faith Leaders, Chiefs gang up against US Envoy on Homosexuality," *Nyasa Times*, (20.1.2016).

The Debate on Causes of Homosexuality

Chapter 1 of this book has shown that there is no consensus on the causes of homosexuality. There are two main theories as to what causes homosexuality: (a) nature (that people are born gay), and (b) nurture (as a result of upbringing, experience and the social-environmental factors).

Pro-Homosexuality Responses Based on the Causes of Homosexuality

Gay rights campaigners in Malawi and worldwide have adopted the theory that homosexuality is caused by nature, so that people are born gay. John Kasich, a USA Republican presidential hopeful was of the view that gay people were probably born that way, and he saw no reason to discriminate against homosexuals.¹⁹⁰ According to the Learn to Love website, it has become the mantra of our time to say that: "your genes (DNA) are your destiny!" The unproven theory of a homosexual gene is widely accepted as fact within psychology, biology and theology. The claim that homosexuality is a natural, genetically inherited orientation is aggressively promoted today.¹⁹¹ Therefore, the view that homosexuality is genetically caused gives a pro-homosexual response because it is part and parcel of an individual's humanity that cannot be taken away.

Gay rights advocates appeal to the genetic causation of homosexuality because of four reasons. The first reason is that it counters the argument by the religious groups who assert that homosexual conduct is unnatural. The second reason is that many homosexuals feel guilty about their sexual orientation and if a biological foundation is found, it would not be their fault. The third reason is that by advancing a biological explanation, gay-rights advocates assert that it would afford homosexuals more legal protection against discriminatory practices. The fourth reason is that the so-called Christian homosexuals would be able to say to the church in general: "God made us like this."

¹⁹⁰ John Gittleson, "Kasich: Homosexuals are 'Probably' Born Gay, Shouldn't be Discriminated against" *ABC News*, (30.4.2016).

¹⁹¹ www.learntolove.co.za/index.php/the-bible-and-same-sex-attraction/is-the-cause-of-homosexuality-not-a-homosexual-gene (2.5.2016).

Homosexuals, therefore, believe that if there is a gene contributing to sexual orientation, it follows that homosexuality is normal and thus worthy of preservation.¹⁹²

The genetic causation of homosexuality has influenced the formation of human rights instruments and gay rights advocacy for the pro-homosexual position in Malawi and worldwide.

When CEDEP and CHRR are appealing to Malawians to understand issues of sexual orientation, they are basically saying that people are homosexuals because they are born that way. It is like one being born a tall person. That person cannot be discriminated because of his or her height. In the same way, one who is born a homosexual should not be discriminated because he or she was born that way. In other words, to discriminate people based on their sexual orientation is to deny their fundamental right to human dignity.¹⁹³

I am of the view that the gay rights pro-homosexuality campaign is premised on the faulty or unproven scientific grounds that consider homosexuality to be genetically caused.

Anti- Homosexuality Responses Based on the Causes of Homosexuality

Anti-homosexuality responses based on the causes of homosexuality do not accept that homosexuality is genetically caused. Thus, President Yoweri Museveni of Uganda used this scientific loophole to justify the introduction of a bill that criminalizes homosexuality in Uganda. He signed the anti-homosexual bill into law after getting advice from a team of Ugandan scientists who asserted that there is no scientific evidence for the theory that homosexuality is genetically caused.¹⁹⁴

Nurture theories of homosexuality consider it to be caused by upbringing, experience, social-environmental factors, and personal

¹⁹² Ibid.

¹⁹³ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," Roehampton University, 2012.

¹⁹⁴ Maddy Fry, "Ugandan President Signs Anti-Gay Bill," Time, (24.2.2016).

choice.¹⁹⁵ This understanding of the cause of homosexuality generates anti-homosexual responses because one can choose to either become a homosexual or not. It also implies that an individual can change his or her sexual orientation and behaviour.

Actress Cynthia Nixon caused controversy among the gay community because of her remarks in the New York Times that homosexuality was a personal choice for her.¹⁹⁶ According to Huffington Post, Cynthia Nixon told the New York Times:

I gave a speech recently, an empowerment speech to a gay audience, and it included the line 'I've been straight and I've been gay, and gay is better.' And they tried to get me to change it, because they said it implies that homosexuality can be a choice. And for me, it is a choice. I understand that for many people it's not, but for me it's a choice, and you don't get to define my gayness for me. A certain section of our community is very concerned that it not be seen as a choice, because if it's a choice, then we could opt out. I say it doesn't matter if we flew here or we swam here, it matters that we are here and we are one group and let us stop trying to make a litmus test for who is considered gay and who is not... Why can't it be a choice? Why that is any less legitimate? It seems we're just ceding this point to bigots who are demanding it, and I don't think that they should define the terms of the debate. I also feel like people think I was walking around in a cloud and didn't realize I was gay, which I find really offensive. I find it offensive to me, but I also find it offensive to all the men I've been out with.¹⁹⁷

Cynthia Nixon's assertion that she was gay by choice contradicted LGBT's premise in the fight for equal rights. LGBT activists have built

¹⁹⁵ Ralph H. Gundlach, "Childhood Parental Relationships and the Establishment of Gender Roles of Homosexuals," *Journal of Consulting and Clinical Psychology*, 33 (April 1969), p. 137.

¹⁹⁶ Mark Larkin and Marissa, "Bisexuality is a fact': Cynthia Nixon seeks to clarify her comments after causing outrage by saying she is 'gay by choice,'" *The New York Times*, (31.1.2012).

¹⁹⁷ Cynthia Nixon on Being Gay: "For Me It's a Choice," *Huffpost Queer Voices*, (2.2.2016).

their argument around the idea that being gay is "not a choice." By this they mean that for many gay people, their attraction to the same sex is essentially an inborn trait—something that they have experienced for as long as they can remember—and so may be thought of as immutably biological. And from thence stem most mainstream arguments about "protected classes", civil rights, and the like, even if science hasn't yet entirely sorted the precise balances of nature and nurture in determining sexuality.¹⁹⁸

John Aravosis criticized Nixon's words because "every religious hate-monger will now be quoting this woman every single time they want to deny gays and lesbians their civil rights."¹⁹⁹

Cynthia Nixon was forced to clarify her remarks in which she stated that bisexuality is not a choice, but her decision to be in a homosexual relationship is.²⁰⁰ She further said that her comments in the *New York Times* were about her personal story of being gay. She explained that:

I believe we all have different ways we came to the gay community and we can't and shouldn't be pigeon-holed into one cultural narrative which can be un-inclusive and disempowering... I understand that for many people it's not, but for me it's a choice, and you don't get to define my gayness for me.²⁰¹

Cynthia Nixon is an example of a self-confessed lesbian who attributes her sexuality to her own personal choice.

In chapter 3 of this book, I presented a discussion on the motivational factors for becoming a homosexual or practicing homosexuality in Malawi. There are at least five factors that motivate people to become homosexuals or engage in homosexual behaviour in Malawi. These factors include: money, the push for human rights, the influence of non-

¹⁹⁸ "Is Cynthia Nixon's Sexuality really a Choice?" www.slate.com/blogs/xx (2.2.2016).

¹⁹⁹ Ibid.

²⁰⁰ Mark Larkin and Marissa, "'Bisexuality is a fact': Cynthia Nixon seeks to clarify her comments after causing outrage by saying she is 'gay by choice,'" *The New York Times*, (31.1.2012).

²⁰¹ Ibid.

governmental organizations (NGO's), failure to propose the opposite sex, and modern media technologies. Nevertheless, I argue that these factors are not in themselves able to cause the homosexual condition or practice. I am of the view that it takes an individual's choice for one to become a homosexual or engage in homosexual practice. In other words the aforementioned five factors that motivate people to become homosexuals or engage in homosexual behaviour in Malawi are contingent on personal choice. It is an act of free will.

Free will is defined as a voluntary choice or decision or the freedom of humans to make choices that are not determined by prior causes or by divine intervention.²⁰² Free will should be considered in two ways. On the one hand, man possesses genuine moral freedom, power of real choice, true ability to determine the course of his thoughts and volitions, to decide which motives shall prevail within his mind, to modify and mold his own character or, on the other hand, man's thoughts and volitions, his character and external actions, all merely the inevitable outcome of his circumstances. They all are inexorably predetermined in every detail along rigid lines by events of the past, over which he himself has had no sort of control. This is the real import of the free-will problem.²⁰³

Humans by virtue of being human seek certain goals, but are able to choose between routes to achieve these goals.²⁰⁴ Humans are governed by *intellect*, *will*, and *passions* in facing choices. The will is "the primary mover of all the powers of the soul ... and it is also the efficient cause of motion in the body."²⁰⁵

There is a self-conscious advertence to our own causality or awareness that we are choosing the act, or acquiescing in the desire of it. The

²⁰² www.merriam-webster.com/dictionary/free%20will (2.2.2016).

²⁰³ Michael Maher, "Free Will," *The Catholic Encyclopedia*, Vol. 6. New York: Robert Appleton, 1909.

²⁰⁴ Christopher Hartung, "Thomas Aquinas on Free Will". University of Delaware. www.udspace.udel.edu/handle/19176/12979, (2.5.2016).

²⁰⁵ Eleanor Stump, "Aquinas (Arguments of the Philosophers)." London: Routledge, Psychology Press, 2003.

essential feature in free volition is the element of choice, the *vis electiva*, as St. Thomas Aquinas calls it.²⁰⁶ There is a concomitant interrogative awareness in the form of the query "shall I acquiesce or shall I resist? Shall I do it or something else?", and the consequent acceptance or refusal, ratification or rejection, though either may be of varying degrees of completeness. It is this act of consent or approval, which converts a mere involuntary impulse or desire into a free volition and makes a person accountable for it. A large part of the operation of carrying out a resolution, once the decision is made, is commonly of this kind. The question of free will may now be stated thus. "Given all the conditions requisite for eliciting an act of will except the act itself, does the act necessarily follow?" Or, "Are all my volitions the inevitable outcome of my character and the motives acting on me at the time?"²⁰⁷ In view of the above argument it can be deduced that one chooses to either become a homosexual or engage in homosexual practice.

Therefore, anti-homosexual responses based on the nurture theories of homosexuality presume that it is a personal choice which can be reversed. On this basis, the majority of Malawians who are anti-homosexual are urging the government not to decriminalize homosexuality as one way of inducing change to heterosexuality.

Conclusion

Since there is no consensus regarding causes of homosexuality, pro-homosexual and anti-homosexual responses have been given in the homosexual debate. On the one hand, gay rights activists are influenced by scientific definitions and causes of homosexuality, i.e. nature/genetic theories to give pro-homosexual responses. On the other hand, religious groups and conservative groups use nurture theories to give anti-homosexual responses.

²⁰⁶ Thomas Aquinas, Free Will (Prima Pars, Q83), Summa Theologiae,

²⁰⁷ Michael Maher, "Free Will." The Catholic Encyclopedia, Vol. 6. New York: Robert Appleton Company, 1909.

Pro-Gay Organizations Use of Human Rights Instruments

Chapters 2, 3, 4, and 5 of this book have shown that pro-gay organizations in Malawi, Africa, and the entire world use human rights instruments to promote homosexuality. However, there is no consensus regarding the use of human rights instruments to advance LGBT rights. Consequently, various stakeholders have given pro-homosexual and anti-homosexual responses in the homosexual debate.

Pro-Homosexuality Responses Based on Human Rights Instruments

The protection of sexual minorities should be considered in the light of the international human rights instruments which are binding on all member states of the UN.²⁰⁸ Chapter 6 has shown that pro-gay organizations use human rights instruments like UDHR, ACHPR, ECHR, ICCPR, and Yogyakarta Principles.

UN Responses Based on Human Rights Instruments

The United Nations under the leadership of Ban Ki-Moon has promoted a universal appeal for the decriminalization of homosexuality, focusing in particular on encouraging African nations to repeal their inherited colonial-era laws which criminalize homosexuality.²⁰⁹ This global push for the recognition of LGBT rights serves as an impetus for pro-gay organizations to make pro-homosexual responses in the homosexual debate.

The global LGBT rights lobby is premised on human rights. The argument is that since human rights are inalienable to all members of the human family; gays and lesbians are also entitled to the same rights because they are human beings.²¹⁰

²⁰⁸ Luis Edgar Francisco Huamuse, "The Rights of Sexual Minorities under the African Human Rights Systems," LLM, University of Western Cape, 2006.

²⁰⁹ Ban Ki-Moon, "Urges Respect for Gay Rights," *BBC News*, (29.1.2012).

²¹⁰ "Human Rights Watch World Report 2008," www.hrw.org/report/2008/ (27.10.2015).

Several UN and regional bodies and jurisdictions have applied a wholistic approach to equality and human rights to benefit LGBT persons, including the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights, among others.²¹¹

In December 2008, in a statement to the UN General Assembly, 66 states called for an end to discrimination based on sexual orientation and gender identity. The statement went beyond simply declaring that LGBT persons should be tolerated, insisting that protecting the right to equality and dignity of people of different sexual orientations and gender identities is of paramount concern.²¹² The statement says:

We reaffirm the principle of universality of human rights, as enshrined in the Universal Declaration of Human Rights whose 60th anniversary is celebrated this year, Article 1 of which proclaims that 'all human beings are born free and equal in dignity and rights' [...] We reaffirm the principle of non-discrimination which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity.²¹³

The UN Committee on Economic, Social and Cultural Rights (CESCR) has expressed concern over discrimination on grounds of sexual orientation in a number of general comments²¹⁴ and concluding observations.²¹⁵ More significantly, CESCR has recently provided an authoritative interpretation of Article 2(2) of the ICESCR in General Comment No. 20 where it has explicitly stated that discrimination on the grounds of sexual orientation and gender identity are covered by the 'other status' clause of Article 2(2) which says:

²¹¹ Dimitrina Petrova, "The use of equality and anti-discrimination law in advancing LGBT rights," www.equalrightstrust.org/ (2.6.2016).

²¹² Ibid.

²¹³ "Statement to the UN General Assembly, A/63/635, 22 December 2008" www.hirschfeld-eddy-stiftung.de/fileadmin/.../UN_document_63_635_Eng.pdf (2.6.2016).

²¹⁴ "UN Committee on Economic, Social and Cultural Rights 2000a; 2002a; 2006," <https://www1.umn.edu/humanrts/gencomm/econ.htm>, (2.6.2016).

²¹⁵ Ibid.

Sexual orientation and gender identity: 'Other status' as recognized in Article 2(2) includes sexual orientation. State parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place.²¹⁶

The UN Committee on the Rights of the Child made a General Comment No. 4 which asserts that Article 2 of the Convention of the Rights of the Child covers sexual orientation and health status:

State parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2) including with regard to 'race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These grounds also cover adolescents' sexual orientation and health status (including HIV/AIDS and mental health).²¹⁷

The UN Committee against Torture explains in General Comment No. 2 that laws in relation to fulfilling obligations under the UN Convention against Torture must be:

Applied to all persons, regardless of [...] sexual orientation, transgender identity [...] States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.²¹⁸

²¹⁶ Ibid.

²¹⁷ "UN Committee on the Rights of the Child 2003, para. 6," <https://www1.umn.edu/humanrts/gencomm/econ.htm>, (2.6.2016).

²¹⁸ UN Committee against Torture 2008, para. 21, <https://www1.umn.edu/humanrts/gencomm/econ.htm>, (2.6.2016).

I have observed that the contents of the above-mentioned human rights instruments do not explicitly state that sexual orientation is the basis of discrimination; rather, it is the interpretation of these human rights instruments which implies protection of LGBT status.

Human Rights in the Republic of South Africa

South Africa is a member of the UN, African Union (AU) and of the Southern Africa Development Community (SADC) of which Malawi is also a member. Thus, pro-homosexual responses made in South Africa have some implications in Malawi.

South Africa is the first African nation to legalize same-sex marriages and can be considered to be a pioneer in conferring positive rights to LGBT citizens.²¹⁹ The protection of LGBT rights in South Africa is based on Section 9 of the Constitution, which forbids discrimination on the basis of sex, gender or sexual orientation, and applies to the government and to private parties. The Constitutional Court has stated that the section must also be interpreted as prohibiting discrimination against transgender people.²²⁰

The South African Constitutional Court in the 1998 *National Coalition for Gay and Lesbian Equality v. Minister of Justice* court case struck down sodomy laws finding that their existence violated the constitutional right to equality (section 9).²²¹

The Court ruled that as with all other grounds, discrimination on grounds of sexual orientation degrades and violates dignity in an intolerable way in contravention of the dignity clause (Section 10) of the South African Constitution. The court further compared apartheid legislation of racial discrimination to sodomy laws that discriminates against LGBT people.²²²

²¹⁹ Adam J. Kretz, "From Kill the Gays" to "Kill the Gay Movement": The Future of Homosexuality Legislation in Africa, www.ssrn.com/abstract=2210985 (4.4.2016).

²²⁰ "Gay Rights Win in South Africa" *BBC News*, (9.10.1998).

²²¹ "Southern African Legal Information Institute," www.saflii.org › Databases, (2.6.2016).

²²² Ibid.

By drawing parallels with other vulnerable groups and other grounds of discrimination, the South African Constitutional Court made it plain that while LGBT persons are a vulnerable and marginalized group in South African society, it is the explicit purpose of the right to equality and the right to dignity to end such cycles of vulnerability and marginalization. This emphasis – that the purpose of a substantive right to equality is to end cycles of discrimination and oppression suffered by socially vulnerable groups – is inherent to the right to equality understood in a wholistic framework of the indivisibility of human rights.²²³

Pro-Homosexuality Responses Based on Human Rights in Malawi

The LGBT rights lobby in Malawi has adopted the same agenda used by the international community to promote gay rights. In this way, Malawi being a member state of the United Nations and a signatory to at least 32 international human rights instruments,²²⁴ is obliged to recognize and grant the rights enshrined in all the ratified instruments. This explains why CEDEP, CHRR, and the international community postulate that Malawi is in violation of international law if it does not legalize homosexuality.²²⁵

Section 20 (1) of the Malawian Constitution states that discrimination of persons in any form is prohibited and all persons are under any law guaranteed equal and effective protection against discrimination on the grounds of race, colour, sex, language, religion, nationality, ethnic or social origin, disability, property, or other status.²²⁶ Manuel Malamba observes that CEDEP and CHRR have argued that Section 20 (1) protects

²²³ Ibid.

²²⁴ Republic of Malawi, Report to the African Commission on Human and People's Rights: Implementation of the African Charter on Human and Peoples Rights 1995-2013 and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women 2005-2013.

²²⁵ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," Roehampton University, 2012.

²²⁶ Section 20 (1) of the Constitution of Malawi, www.constitution.org/cons/malawi.htm (2.6.2016).

LGBT rights and that the Malawi government should enforce the rule of law by legalizing homosexuality.²²⁷

Virginia Palmer, US ambassador to Malawi, Peter Woeste, German ambassador to Malawi, Michael Nevin, British High Commissioner to Malawi, Human Rights Watch, CEDEP, and CHRR, urged the government to fulfil its international human rights obligations by dropping the charges against a gay couple arrested in Lilongwe on 7 December 2015.²²⁸ In response to these calls, Samuel Tembenu, the Minister of Justice under the Peter Mutharika administration, announced the dropping of the charges against a gay couple: Cuthbert Kulemela and Kelvin Gonani²²⁹ on 20 December 2015. He argued that the Malawi government has dropped the charges because it wanted to demonstrate its adherence to universally accepted standards of human rights.²³⁰

Therefore, I argue that the global push for human rights is one of the pro-homosexual factors which are influencing the homosexual debate in Malawi. In other words, Malawi might eventually legalize homosexuality because of two reasons emanating from the global human rights agenda. First, Malawi might eventually legalize homosexuality because of its obligations to fulfil the international human rights treaties which it ratified. Second, Malawi might eventually legalize homosexuality because of its desire to have a good international human rights record. According to a Human Rights Watch report, Malawi's human-rights situation was described as having "deteriorated significantly in 2011, with President Bingu wa Mutharika's government acting in an increasingly repressive manner." During the year, Mutharika had "signed repressive new legislation, including Section 46 of the penal code, which allows the minister of information to ban publications deemed 'contrary

²²⁷ Ibid.

²²⁸ Thom Chiumia, "UK Discusses Malawi Gay 'Horrifying News,'" *Nyasa Times*, (17.12.2015).

²²⁹ Wanga Gwede, "Two Men Nabbed for Gay Sex Act Charged in Malawi," *Nyasa Times*, (9.12.2015). The Gay Couple was arrested and charged with sodomy on 7 December 2015 in Area 25, Lilongwe.

²³⁰ Thom Chiumia, "Malawi Drops Charges against Gay Men: Anti-Homosexual Laws Suspended, Says Justice Minister," *Nyasa Times*, (20.12.2015).

to the public interest." A new Injunctions Law prohibiting the filing of civil suits against government officials. University lecturers and students who had criticized the government's human-rights failures had been harassed and a university student who was vice-president of Youth for Freedom and Democracy (YFD) had been "found dead at the Polytechnic campus with a deep cut to his head. Although police ruled his death a suicide, civil society activists accused the government of involvement in Chasowa's death."²³¹

Therefore, in a bid to maintain a good human rights record, Malawi may eventually legalize homosexuality which is now regarded as an important yardstick of measuring the progress of international human rights in Africa.

Anti-Homosexuality Responses Based on Human Rights Instruments

Anti-homosexuality responses based on human rights instruments have capitalized on the loopholes existing in the instruments. For instance, critics like Syria²³² have argued that sexual orientation and gender identity are not explicitly mentioned in Article 2 of the Universal Declaration of Human Rights (UDHR), Article 2 of African Charter of Human and People's Rights (ACHPR), Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), or Article 26 of the ICCPR.²³³

Anti-homosexuality responses based on human rights have been expressed to the UN General Assembly by various nations. For instance, the day after the 66 states made their statement on human rights,

²³¹ "World Report 2012: Malawi". www.hrw.org (3.5.2016).

²³² "Statement to the UN General Assembly, A/63/635, 22 December 2008," www.hirschfeld-eddy-stiftung.de/fileadmin/.../UN_document_63_635_Eng.pdf (2.6.2016).

²³³ Article 26 ICCPR states: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

sexual orientation and gender identity, the Syrian Arab Republic read a counterstatement on behalf of a large group of states contending that "rights based on sexual orientation and gender identity [...] have no legal foundation in any international human rights instrument."²³⁴

Yahya Jammeh, former Gambian President, warned the United Nations General Assembly on 27 September 2013 that gays were a threat to human existence and criticized other countries for regarding homosexuality as a human right. Homosexuality in all its forms and manifestations which, though very evil, antihuman as well as anti-Allah, is being promoted as a human right by some powers...Those who promote homosexuality want to put an end to human existence.²³⁵

Robert Mugabe, the former President of Zimbabwe criticized Western nations' attempts to "prescribe new rights contrary to our values, norms, traditions and beliefs. We are not gays!"²³⁶ These two anti-homosexual statements by African leaders show that the UN General Assembly is considered as a battleground either for or against the phenomenon of homosexuality.

The infamous Anti-Homosexuality laws introduced in Uganda, Nigeria, and Russia illustrate the resistance to progressive implementation of universal rights in respect of LGBT persons.²³⁷

Conclusion

This section has demonstrated that the human rights discourse in relation to the homosexuality debate has produced both pro-homosex-

²³⁴ "Statement to the UN General Assembly, A/63/635, 22 December 2008," www.hirschfeld-eddy-stiftung.de/fileadmin/.../UN_document_63_635_Eng.pdf (2.6.2016).

²³⁵ Michelle Nichols, "Gambian President Says Gays a Threat to Human Existence," *Reuters*, (27.9.2013).

²³⁶ Rose Troup Buchanan, "Robert Mugabe tells UN General Assembly: 'We are not Gays!'" *Independent*, (29.9.2015)

²³⁷ Dimitrina Petrova, "The use of equality and anti-discrimination law in advancing LGBT rights," www.equalrightstrust.org/ (2.6.2016).

uality and anti-homosexuality responses. On the one hand, pro-homosexual advocates are arguing that the international human rights instruments do protect LGBT rights. On the other hand, anti-homosexual advocates are arguing that the international human rights instruments do not explicitly mention sexual orientation as a ground for discrimination. On this basis, anti-homosexuality advocates are of the opinion that the human rights instruments do not bind any UN member state to enforce LGBT rights. Consequently, consensus has not yet been reached on whether or not human rights instruments protect LGBTI rights.

Decriminalization of Homosexuality in Malawi

Chapter 2 of this book has shown that the homosexuality debate in Malawi can properly be located on the basis of its legalization because that is one of the main determining factors for either its acceptability or non-acceptability in society. LGBT rights will fully be granted and protected once homosexuality has been legalized. Therefore, this section of the book will present a discussion on the challenges which the government is facing in relation to the legalization of homosexuality.

Present Legal Status

It is important to establish a framework for categorizing national laws on homosexuality. This is helpful for analyzing the homosexuality debate in Malawi in two ways. First, it will enable us to understand where we are now. Second, it will also enable us to identify the next possible steps concerning the progression of the legalization process. Adam Kretz argues that there are seven stages in which African nations can be categorized concerning the move from criminalization to social integration. These seven steps are: total marginalization, criminalization of sexual behaviour, codification of anti-discrimination laws, establishment of positive rights, full legal equality, and cultural integration.²³⁸

²³⁸ Adam J. Kretz, "From Kill the Gays" to "Kill the Gay Movement": The Future of Homosexuality Legislation in Africa, www.ssrn.com/abstract=2210985 (4.4.2016).

Malawi is on the second stage where homosexuality is criminalized. The Malawi Penal Code criminalizes homosexuality in the following provisions: Section 137A, Section 153, Section 154, and Section 156.²³⁹ These homosexual offences attract a penalty which ranges from 5 to 14 years imprisonment.²⁴⁰

Steven Monjeza and Tiwonge Chimbalanga's conviction and sentencing to fourteen years imprisonment on homosexual offences precipitated the debate for the legalization of homosexuality in Malawi.²⁴¹ I have observed that an important question to be asked in this debate is: "What is the necessity of legalizing homosexuality in Malawi?" In response to this question, I will give both pro-homosexuality and anti-homosexuality responses in view of the legalization of homosexuality in Malawi.

Pro-Homosexuality Responses in view of Legalization of Homosexuality in Malawi

Chapter 2 of this book has discussed some pro-homosexual responses from different stakeholders in view of the legalization of homosexuality in Malawi. They include the Government of Malawi, pro-gay rights organizations like CEDEP and CHRR, the Western nations, donor agencies, and the international community.

The local and international community are advocating for the legalization of homosexuality in Malawi because they consider criminalization of homosexuality to be inconsistent with international law and human rights standards.²⁴² The main argument for the legalization of homosexuality in Malawi is based on the international human rights instruments

²³⁹ www.icrc.org/ihl-nat.../Constitution%20Malawi%20-%20EN.pdf (15.12.2015).

²⁴⁰ Ibid.

²⁴¹ Jessica Geen, "Malawi Gay Couple Found Guilty of 'Unnatural Acts' and 'Gross Indecency,'" *Pinknews*, (18.5.2010).

²⁴² Ibid.

ratified by the Malawi Government.²⁴³ Justice Minister, Samuel Tembenu, announced a moratorium on anti-gay laws in December 2015 because the Government of Malawi wanted to honour the international human rights instruments which it ratified.²⁴⁴

I have observed that the Malawi Government has made pro-homosexuality responses in view of legalization with the intention of getting donor aid, as several Western countries and donor agencies threatened to either cut or suspend their financial aid to Malawi due to the laws that criminalize homosexuality.²⁴⁵

Malawi relies on donor aid for budgetary support. However, donors who provide about 40% of Malawi's budget withdrew their aid of around \$ 150 million due to the corruption scandal, locally dubbed "Cashgate." Consequently, the country is facing numerous economic challenges affecting its overall socio-economic development.²⁴⁶

It is noteworthy that Malawi has failed on two occasions to implement a non-donor funded budget. The Zero Deficit Budget (ZDB) was laid out by Ken Kandodo, a Minister of Finance of Malawi under the Bingu wa Mutharika administration.²⁴⁷ The ZDB was acclaimed to be a new approach to economic financial budgeting for least developed countries where the government aims to finance all the recurrent expenditures using its own domestic resources.²⁴⁸ Kandodo mentioned that the new ZDB is based on several consultations and studies; however, he failed to either cite any country on which he had modelled the Zero Deficit

²⁴³ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

²⁴⁴ Thom Chiumia, "Malawi Drops Charges against Gay Men: Anti-Homosexual Laws Suspended, says Justice Minister," *Nyasa Times*, (20.12.2015).

²⁴⁵ Katherine Nikas, "\$ 350 Million Rescinded: Aid to Malawi Dependent on Complicity in Homosexual Rights Agenda," Lifesite News.com, (5.7.2011).

²⁴⁶ Ibid.

²⁴⁷ www.trademarksa.org/news/zero-deficit-budget-puzzle, (6 .4.2016).

²⁴⁸ www.maknet.org.mw/content/20112012-zero-deficit-budget-tool-economic-development-malawi, (6.4.2016).

Budget approach or any country that successfully executed a Zero Deficit Budget.²⁴⁹

Malawi again attempted to implement a non-donor funded budget during the Joyce Banda administration by introducing a Zero Aid Budget in 2013 which did not include the 40% budgetary aid from donors. The Malawi government introduced the Zero Aid Budget because donors did not make any commitment to budgetary support due to the Cashgate scandal.²⁵⁰ In May 2016, Goodall Gondwe, Malawi's Finance Minister under the Peter Mutharika administration argued that Malawi should continue with the Zero Aid Budget because he was more concerned with what the country can do on its own rather than getting free aid.²⁵¹ However, Malawi's plan to have a full locally funded budget without donor support has led to harsh economic conditions resulting in the suffering of the masses and decline in socio-economic growth.

Participants of this study expressed their concerns that the government of Malawi is secretly advocating the legalization of homosexuality.²⁵² They feared that the Malawi government has embraced homosexuality by requesting \$ 388 888 from the Global Fund for HIV/Aids interventions targeting the LGBTI community.²⁵³ The Global Fund gave a record US \$ 380 million grant to the Malawi government to facilitate the fight against HIV/Aids, TB and Malaria with a condition of promoting gay rights. President Peter Mutharika and Mark Dybul, Global Fund's Executive Director, witnessed the signing of the funding agreement at

²⁴⁹ www.trademarksa.org/news/zero-deficit-budget-puzzle, (6.4.2016).

²⁵⁰ Harry Chibwe, "Malawi Starts Working on Zero Deficit Budget-Finance Minister," *Nyasa Times*, (26.3.2014).

²⁵¹ "Malawi to continue with Zero-Aid Budget-Finance Minister," *Nyasa Times*, (6.5.2015).

²⁵² Focus Group Discussion at Bija Mbale Village, Mzimba, (12.10.2015).

²⁵³ Thom Chiumia, "Gay Activists Hail Malawi Government for Homosexuality Acceptance: Calls for Commitment," *Nyasa Times*, (27.2.2015).

Kamuzu Palace in Lilongwe on 20 October 2015.²⁵⁴ Hence, the participants interpreted the president's endorsement as the beginning of the legalization of homosexuality.

I am of the view that the reaction by Western governments and donor organizations gives the impression that donor aid is being tied to homosexuality in order to force African nations like Malawi to legalize homosexuality. Therefore, I argue that donor aid is one of the pro-homosexual factors that influence the homosexual debate in Malawi. Although the majority of Malawians are against the legalization of homosexuality, they are feeling the pinch of the economic hardships brought about by the freeze of foreign aid which they ascribe to Malawi's opposition to homosexuality. Also, the government has tried unsuccessfully to implement both a Zero Deficit Budget and a Zero Aid Budget basically demonstrating that Malawi cannot run without donor aid. Consequently, this might eventually make Malawi to bow down to the pressure by Western donor nations and agencies to legalize homosexuality.

One of the causes of homosexuality which is discussed in Chapter 2 is "personal choice." People choose to become homosexuals and engage in homosexual activity. However, I have observed that people also choose to engage in other vices like beer drinking, smoking, adultery, polygamy etc. which are not criminalized. Thus, I am of the view that consensual homosexual activity which is based on personal choice should not be criminalized just as beer drinking, smoking, adultery or polygamy is not criminalized.

Anti-Homosexuality Responses in View of Legalization of Homosexuality in Malawi

Politics is one of the main factors hindering the decriminalization of homosexuality in Malawi.²⁵⁵ Although human rights are codified in both

²⁵⁴ "Global Fund Gives Malawi Record \$ 380 Million Grant: Deepen Partnership to Fight HIV, TB, and Malaria," *Nyasa Times*, (22.10.2015).

²⁵⁵ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that Make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

international and national law, it is important to understand that the functionality of human rights is based on politics. Thus, the state is a major player as far as human rights are concerned because both recognition and implementation hinges on the political will of the state.

The word "politics" can be defined in two ways: (1) the activities, actions, and policies that are used to gain and hold power in a government or to influence a government; (2) a person's opinions about the management of government.²⁵⁶ The word "state" can be defined as a compulsory political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain territory.²⁵⁷

Therefore, the future of the homosexual debate in Malawi is to an extent influenced by the political will of the state. This can be validated in the fact that since the homosexual public debate started in Malawi in 2009 by the arrest of the gay couple Steven Monjeza and Tiwonge Chimbalanga,²⁵⁸ the state has maintained the criminalization of homosexuality.

Politicians in Malawi have objected to the legalization of homosexuality by arguing that Malawi is a sovereign state which has the right of self-determination.²⁵⁹ According to Encyclopedia Britannica, sovereignty is understood in jurisprudence as the full right and power of a governing body to govern itself without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme authority over some polity.²⁶⁰ Therefore, the intervention of western nations and donor agencies for the legalization of

²⁵⁶ www.merriam-webster.com/dictionary/politics, (6.5.2016).

²⁵⁷ Cudworth and Erika, *The Modern State: Theories and Ideologies*, Edinburgh University Press, 2007.

²⁵⁸ Caroline Somanje, "Gays Engage," *Nation Newspaper*, (28.12.2009).

²⁵⁹ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

²⁶⁰ www.britannica.com/ebchecked/topic/557065/sovereignty (6.5.2016).

homosexuality in Malawi is seen as an interference in Malawi's sovereignty. Additionally, the constitution of the Republic of Malawi clearly identifies Malawi as a sovereign state. It states that: "The Republic of Malawi is a sovereign State with rights and obligations under the Law of Nations."²⁶¹ Dr Hetherwick Ntaba, a former spokesman of the late president Bingu wa Mutharika said:

In as far as we cannot run away from the fact that we need their aid, it is absurd for those countries to be forcing the country to embrace immoral cultures. We are a sovereign state and we deserve to be treated as such, aid or no aid.²⁶²

Politicians in Malawi understand the sensitivity of the homosexuality debate. Three different administrations of the Malawi government have been confronted with the legalization of homosexuality: President Bingu wa Mutharika,²⁶³ President Joyce Banda,²⁶⁴ and President Peter Mutharika.²⁶⁵ However, none of these three administrations has shown a decisive leadership on the issue, partly due to the political ramifications. Legalizing homosexuality would offend both religious and traditional leaders, and the politicians rely on the religious leaders and chiefs to mobilize people for any political initiative. This means that if the religious leaders and chiefs are saying no to the legalization of homosexuality, they are representing the voice of the majority which is needed by the politicians during parliamentary, presidential, and local government elections. Therefore, it is the opinion of the politicians that any parliamentarian or president, who can advocate for the legalization of homosexuality, is consequently voting himself/herself out of parliament and presidency.

²⁶¹ www.sdnw.org.mw/constitut/dtlindx.html (6.5.2016).

²⁶² Katherine Nikas, "\$ 350 Million Rescinded: Aid to Malawi Dependent on Complicity in Homosexual Rights Agenda," Lifesite News.com, (5.7.2011)

²⁶³ "Malawi to Review Gay Ban, Bad Laws- Justice Minister," *Nyasa Times*, (8.12.2011).

²⁶⁴ "Malawi President Banda's State of the Nation Address in Full," *Nyasa Times*, (18.5.2012).

²⁶⁵ "Referendum for Same-sex Affairs in Malawi- Mutharika," *Nyasa Times*, (2.9.2015).

Therefore, I am of the view that the Malawi Government has made a well-informed political choice to maintain the laws that criminalize homosexuality despite contemporary prevalence of the homosexual phenomenon in the country due to the fear of losing votes in the tripartite general elections.

Conclusion

The homosexuality debate in Malawi boils down to the legalization of homosexuality. On the one hand, pro-gay rights organizations, western nations, donor agencies, and the minority of homosexuals in Malawi are arguing for the legalization of homosexuality. On the other hand, the government, conservative religious groups, traditional leaders, and the majority of Malawians are arguing for the criminalization of homosexuality. Hence, there is no consensus in the homosexual debate in Malawi regarding the legalization of homosexuality.

Homosexuality in Relation to Malawian and African Culture

Homosexuality in Africa has generally been condemned because of the belief that the phenomenon is alleged to be inconsistent with African culture.²⁶⁶

Politicians, religious, and traditional leaders have used the cultural argument to denounce homosexuality as un-African, inhuman, and a foreign intrusion to African culture.²⁶⁷ Culture is one of the factors that hinder the legalization of homosexuality in Malawi.²⁶⁸

²⁶⁶ Munamato Chemhuru, "Rethinking the Legality of Homosexuality in Zimbabwe: A Philosophical Perspective," *International Journal of Politics and Good Governance* Vol 3, No. 3.3 Quarter III, (2012).

²⁶⁷ Vasu Reddy, Homophobia, human rights and gay and lesbian equality in Africa. *Agenda: Empowering women for gender equity* (2001) 16(50), pp. 83-87.

²⁶⁸ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," Roehampton University, 2012.

However, the prevalence of homosexuality in Malawi and Africa in general shows that the phenomenon is part of African culture. The presence of homosexual practices can be traced back thousands of years. The rock art of the San people, considered the oldest inhabitants of Zimbabwe, explicitly depict same-sex acts amongst men.²⁶⁹ Sylvia Tamale argues that the vocabulary used to describe same-sex relations in traditional languages, predating colonialism, is further proof of the existence of such relations in pre-colonial Africa.²⁷⁰ This shows that homosexuality is part of African culture. There is no way criminalization of the homosexual phenomenon can stop its existence and practice in both Malawi and Africa.

Culture's Attitude towards Homosexuality

98% of the respondents in the study vehemently denounced the practice of homosexuality. They understood it as a cultural perversion which should not be accepted into Malawian society at all costs.²⁷¹ This finding corresponds to the findings of a 2012 Afro-Barometer Survey which indicated that overall 94% of Malawians don't think that same sex couples should have the right to marry and be in relationships. The disapproval of same sex relationships is above 90% across the country irrespective of location, religion and sex. The results further demonstrate that the highest disapproval rate is in peri-urban areas (99%) and the lowest in cities (92%). The disapproval rates are almost identical among men (94%) and women (95%).²⁷² The findings of this AfroBarometer survey confirm the prevalence of homosexuality in Malawi by showing people's negative attitude towards the phenomenon.

²⁶⁹ Marc Epprecht, "The Unsayings of Indigenous Homosexualities in Zimbabwe: Mapping a Blindspot" *Journal of Southern African Studies* 24 (4) (1998), pp. 631-651; for more evidence of the prevalence of homosexuality in pre-colonial Africa see (4.2.1). Section 4.2.2 has discussed African terms used to describe homosexuality.

²⁷⁰ Sylvia Tamale, "Homosexuality is not un-African," *Aljazeera*, (26.4.2014).

²⁷¹ Fieldwork for this study was conducted in five districts of Malawi: Chikhwawa, Mulanje, Blantyre, Lilongwe, and Mzimba.

²⁷² "Malawians against Same-sex Relationships, Afro-Barometer Survey Reveals," *Nyasa Times*, (5.9.2012).

The study found out that Malawians have a negative attitude towards homosexuality because of three main factors: (1) the belief concerning heterosexual normativeness; (2) that homosexuality brings calamities to society; and (3) the belief that homosexuality destroys our culture which was handed down to us by the ancestors. This negative attitude towards homosexuality plays to the advantage of those who are against homosexuality in Malawi because it strengthens their position.

Homosexuality and Procreation

Chapter 4 of this book has shown that one of the reasons that homosexuality is disdained by African culture is that it does not lead to procreation. The basis of the African emphasis on procreation "is that the religious values associated with sex are concentrated on procreation and not on sexual activity as such."²⁷³ Sex between married couples is seen primarily as an act of procreation not mere satisfaction.²⁷⁴ Hence, the practice of voluntary childlessness among couples in some parts of the world in which couples for various reasons voluntarily abstain from having children, is foreign to many African cultures.²⁷⁵ When applied to the homosexuality debate, therefore, the implication is that both men and women are not expected to remain unmarried not to talk of engaging in same sex relationships or marriage. This accounts for why childless couples are sometimes subjected to family pressure. The parents and the relatives of such couples will consistently reiterate the consequences of dying childless or without an heir.²⁷⁶

Pro-homosexuality advocates have offered a counter argument of child adoption to justify homosexuality because in other countries same-sex couples have the right to adopt and raise children.²⁷⁷ However, there

²⁷³ Lucy Mair, *African Marriage and Social Change*, London: Frank Cass, 1969.

²⁷⁴ K. Abimbola, *Yoruba Culture: A Philosophical Account*, Birmingham: Iroko Academic Publishers, 2006.

²⁷⁵ J.E. Veevers, *Voluntary Childlessness: A Review of Issues and Evidence*, Marriage & Family Review, Vol 2, Issue 2, 1979.

²⁷⁶ Lanre-Abass Bolatjo, The Natural Law Theory of Morality and the Homosexuality Debate in an African Culture," <http://dx.doi.org/10.4314/og.v9i1.10>, (10.12.2015).

²⁷⁷ "Sweden Legalizes Gay Adoption," *BBC News Online*, (6.6.2002).

are some socio-cultural challenges militating against child adoption in traditional African societies. Three problems associated with child adoption in Eastern Nigeria: (1) although child adoption is done, it is alien in Igbo culture (2) no matter how rich an adopted child might be, he cannot be a traditional ruler in the community (3) adoption of babies is bringing a lot of problems that are against people's way of life.²⁷⁸ Therefore, even if same-sex couples can adopt children, the community cannot value them on equal footing as they would with biological children.

Proponents of homosexuality have argued for the possibilities of biological parenting in female same-sex couples. Four main methods for parenting in lesbian couples are: (1) artificial donor insemination, (2) directed donor insemination, (3) lesbian egg donation, and (4) embryo donation.²⁷⁹ However, all these methods are frowned upon in many traditional African societies because of the preference of sexual intercourse in procreation.²⁸⁰

In view of the above observations, I am of the view that homosexuality is completely out of place in many African societies because it does not lead to procreation. I have also observed that the desire for parenting by homosexuals through child adoption and artificial child bearing is self-defeating for two reasons. First, it shows that homosexuality is incomplete because it fails to bring about procreation. Second, it shows the dependency of homosexuality on heterosexuality for its continuation. In other words, procreation can be achieved through heterosexual intercourse and the offspring can either be adopted by homosexuals or become a homosexual later in life.

Conclusion

This book has demonstrated that culture is one of the factors that influence the homosexual debate in Malawi, Africa, and the entire world. On

²⁷⁸ Jude Ossai, www.tribune.com.org/news/2013/indexed (13.10.2013).

²⁷⁹ www.uscfertility.org/gay-lesbian-family-building (4.12.2015).

²⁸⁰ Lanre-Abass Bolatito, "The Natural Law Theory of Morality and the Homosexuality Debate in an African Culture," <http://dx.doi.org/10.4314/og.v9i1.10>, (10.12.2015).

one hand proponents of homosexuality have given pro-homosexuality responses arguing that homosexuality is part of Malawian and African culture. On the other hand, critics of homosexuality have given anti-homosexual responses arguing that homosexuality is inconsistent with African culture. Although there is no consensus regarding homosexuality when it is evaluated on a cultural basis, homosexuality is part of African culture and has been existent in Africa before and after colonization. Therefore, criminalization of homosexuality is not a solution to the homosexuality debate because homosexuality is here to stay just as beer drinking, adultery or polygamy is part of African culture and cannot be criminalized.

Religion and Homosexuality

Religion is one of the main factors that hinder the legalization of homosexuality in Malawi.²⁸¹ Personal beliefs and religious affiliation influence attitudes towards homosexuality. Most religions tend to categorize behaviour associated with homosexuality as "unnatural," "ungodly," "impure," or "abomination."²⁸² As a result of this framing, active religious involvement, regular exposure to religious literature, and frequent interaction with religious friends are likely to encourage anti-homosexual attitudes.²⁸³ Fear of divine punishment for individuals and the society in which they live may lead religious people to encourage others to adopt anti-homosexual attitudes and institute policies that promote intolerance.²⁸⁴

²⁸¹ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

²⁸² A. Yip, "Queering Religious Texts: An Exploration of British Non-Heterosexuals Christians' and Muslims' Strategy of Constructing Sexuality Affirming Hermeneutics," *Sociology*, Vol. 39 (1), pp. 47-65.

²⁸³ D. Sherkat and C Ellison, "The Cognitive Structure of a Moral Crusade: Conservative Protestantism and Opposition to Pornography," *Social Forces*, 75 (3), (1997), pp. 957-980.

²⁸⁴ C. Wilcox, *Onward Christian Soldiers? The Religious Right on American Politics*. Boulder, Westview: Perseus Publishing, 1996.

Relevance of Religion in the Homosexuality Debate

Religion has a pervasive influence on the homosexuality debate in Malawi. However, an important question asked in the homosexual debate in Malawi deals with the relevance of religion in this debate. Pro-gay rights activists have objected to the relevance of religion in the homosexual debate by arguing that Malawi is not a religious state but a secular state.²⁸⁵

Pro-gay rights campaigners Gift Trapence and Billy Mayaya assert that Malawi is a secular state whose guiding principle is a secular constitution. Hence, the call by religious and traditional leaders for the government to maintain laws that criminalize homosexuality is inadmissible.²⁸⁶

Is Malawi a secular or a religious state? On the one hand, pro-gay rights campaigners and some people in the legal fraternity contend that Malawi is a secular state and the same applies to the constitution. On the other hand, religious leaders affirm that as a country, Malawi has religious roots. However, the constitution does not explicitly state that it is either a secular or religious state.

Nevertheless, Section 33 of the constitution says: "Every person has the right to freedom of conscience, religion, belief and thought; and to academic freedom."²⁸⁷ The Malawi Constitution makes an explicit reference to religion when it says in Section 20 that 'all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of... religion.'²⁸⁸

The Constitution acknowledges the existence of religion in Malawi. This acknowledgment is stated in the National Anthem which is enshrined in the Constitution. Section 2 of Chapter One of the Constitution says: "Malawi shall have ... a National Anthem." The first line of the National Anthem reads: "O God bless our land of Malawi." Furthermore, in the

²⁸⁵ Wanga Gwede, "Malawi is a Secular State not a Christian Nation: Activists say Homophobia not Acceptable," *Nyasa Times*, (4.1.2016).

²⁸⁶ Ibid.

²⁸⁷ sdnp.org.mw/constitution/intro.html (20 November 2015).

²⁸⁸ Winston Kawale, "Malawi Resists Secularism," *The Lamp*, (9) (2012).p. 18.

whole of the first verse of the Anthem, God is evoked to bless Malawi and its leader, to make it a land of peace, to defeat all the enemies and unify the people of Malawi. Therefore, if Malawi is a secular state, why is God evoked in the National Anthem, Winston Kawale asks?²⁸⁹

Section 4 of the Constitution of Malawi refers to the three arms of the State which form the government. These are: the Executive, the Legislative, and the Judiciary. Section 81 (1) describes how the president, the highest officer of the State, takes an oath when elected. The oath ends with the phrase 'So help me God.' This means that the constitution orders the State President to evoke God to help him/her as he/she performs state duties. The same is true for the First Vice President or the Second Vice President, the Ministers, Members of Parliament, Judges and some appointed Commissioners. In view of this, how can one say that the Malawi Constitution is secular, Kawale asks?²⁹⁰

Therefore, it is illegal and unconstitutional for pro-gay rights advocates to dismiss religion from the homosexual debate in Malawi. Also, it is unconstitutional for pro-gay rights to qualify religious statements about homosexuality as "hate speech." It is an act of trampling upon the rights of the faith community.²⁹¹

I am of the view that any effort towards the legalization of homosexuality in Malawi should consider both the secular and religious perspectives of Malawians. Pro-gay rights advocates should not usurp the homosexual debate in Malawi by insinuating that Malawi is a secular state when the constitution has not identified it as such. Similarly, the religious fraternity should not claim that Malawi is a religious state because the constitution has not explicitly identified it as such. Rather the Malawi 2020 Vision statement says that:

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹⁰ Ibid.

²⁹¹ Voice of Micah, "Gay-Rights Campaign and the Invention of Religious Radicalism in Malawi," *The Lamp*, (1.3.2016.)

By the year 2020, Malawi as a God-fearing nation will be secure, democratically mature, environmentally sustainable, self-reliant with equal opportunities for and active participation by all, having social services, vibrant cultural and religious values and being a technologically driven middle-income economy.²⁹²

Religious scriptures, i.e. the Bible and the Qur'an, have extensively been used in the homosexual debate. These scriptures clearly state that homosexual behaviour is sin and should not be condoned in the community of believers.²⁹³

"Progressive" Interpretation of the Qur'anic Texts on Homosexuality

Some Muslim advocates of homosexuality have given pro-homosexual responses by using the Qur'an. The average conservative Muslim takes the Qur'anic narrative of Prophet Lut as a justification to stigmatize gays, but there is an important question that deserves consideration: "Did the people of Lot receive divine punishment for being homosexual, or for attacking Lot and his heavenly guests?"²⁹⁴

Scott al-Haq Kugle, a contemporary Islamic scholar argues for a different interpretation of the Lot narrative focusing not on the sexual act but on the infidelity of the tribe and their rejection of Lot's prophet hood. In its narrative of Lot, the Qur'an could be interpreted as condemning lust rather homosexuality.²⁹⁵ In so doing, he dismisses the gravity of the sin of homosexuality in the narrative and suggests that the Qur'an doesn't condemn homosexuality. I am of the view that Scott al-Haq Kugle's interpretation of the story of Lot presents a distorted view of homosexuality which is explicitly condemned in the Qur'an and that the progressive interpretation of the Qur'anic texts on homosexuality is influenced by pro-homosexual human rights approaches and the desire to make

²⁹² www.sdn.org.mw/malawi/vision-2020, (20.5.2016).

²⁹³ For an exhaustive discussion on this point see chapter 7 of this book. But, despite such clear proscription of homosexuality in the scriptures; some religious groups are advocating for homosexuality.

²⁹⁴ Mustafa Akvol, "What Does Islam say about being Gay?" *New York Times*, (28.7.2015).

²⁹⁵ Scott Kugle, *Homosexuality in Islam*, Oxford, England: Oneworld Publications, 2010.

Islam relevant in view of the contemporary prevalence of homosexuality.

Christian Inclusive Argument

Christian advocates of homosexuality have also given pro-homosexual responses by using scriptures. Some Christian churches support the inclusion of gays and lesbians with no restrictions based on homosexuality per se on their participation in the church.²⁹⁶ The inclusive case of homosexuality represents the church's liberal view which considers homosexuality not as a sin; therefore, the church should embrace same-sex relationships.²⁹⁷

Two main arguments have been raised in support of the church's inclusive case of homosexuality: (1) love is the core message of the Bible; and (2) the analogy of the Early Church's inclusion of Gentiles and the contemporary affirmation of homosexuality.

Love is the Core Message of the Bible

The main argument advanced by pro-homosexuality advocates for the inclusion of gays and lesbians into the life of the church is that the Bible's core message is love.²⁹⁸ The gospel calls upon the church to be partisans and advocates of marginalized people.²⁹⁹ When the love command is the starting point in approaching the Bible, we will place the highest priority on biblical texts that call upon us to welcome the lowly and outcasts. This benefit of the doubt toward compassion for the

²⁹⁶ Ted Grimsrud, "The Homosexuality Debate: Two Streams of Biblical Interpretation," peacetheology.net/homosexuality/the-homosexuality-debate-two... (28.12.2015).

²⁹⁷ Letha Scanzoni and Virginia Mollenkott, *Is the Homosexual My Neighbor? A Positive Christian Response*, San Francisco: HarperCollins, 1994.

²⁹⁸ Dan O. Via and Robert Gagnon, *Homosexuality and the Bible, Two Views*, Minneapolis: Fortress Press, 2003.

²⁹⁹ Richard Cleaver, *Know my Name: A Gay Liberation Theology*, Louisville: Westminster, 1995.

outcast challenges followers of Jesus to overcome the social gap between themselves as heterosexual Christians and homosexuals.³⁰⁰

Four objections have been raised against the argument that emphasizes Jesus' double commandment of love (Mark 12:30-31): love of God (Deut 6:5) and love of neighbor (Lev 19:18) as a basis for church's tolerance towards homosexuals. First, it falsely equates love with tolerance of behaviour. Advocates of this approach often start with a definition of love to which Jesus never subscribed. If by love Jesus meant a nonjudgmental acceptance of various lifestyles, especially sexual lifestyles, then Jesus' own stance against divorce/remarriage and adultery of the heart was unloving (Matthew 5:27-32).³⁰¹

Second, it suppresses the first great commandment. This approach usually collapses "the great and first commandment" (Matthew 22:38), love of God, into the second, love of neighbour, and then defines the latter to embrace behaviour that Scripture categorically rejects. Persons who violate God's commands cannot be said to love God whose will is rejected, nor the persons made in God's image whom they involve in their corruption.³⁰²

Third, it overlooks the intertextual echo to Lev 19:17. Jesus' appeal to Lev 19:18, "you shall love your neighbor as yourself"- reverberates with the echo of Lev 19:17 which entails reproving another person in order to reclaim that person for God's kingdom:³⁰³

You shall not hate your brother in your heart. You shall firmly reprove your fellow-countryman and so not incur guilt because of him. You shall not take revenge and you shall not hold a grudge against any of your people (Lev 19:17).

³⁰⁰ Letha Scanzoni and Virginia Mollenkott, *Is the Homosexual My Neighbor? A Positive Christian Response*, San Francisco: HarperCollins, 1994.

³⁰¹ Robert Gagnon in: Dan O. Via and Robert Gagnon, *Homosexuality and the Bible, Two Views*, Minneapolis: Fortress Press, 2003.

³⁰² Ibid.

³⁰³ Ibid.

Fourth, it falsely sees an antithesis between outreach to sinners and intensified ethics. As Jesus' relationship with tax collectors illustrates, true love combines a radical outreach to sinners with an intensification of God's ethical demand. On the one hand, Jesus spoke out against the love of money and sided with the poor. On the other hand, he associated with tax collectors who profited from oppressing the poor financially. Jesus calls upon the church, who actually do the will of God (Mark 3:34-35), to reach out to sinners without softening by one iota the ethical imperatives of God's kingdom (Matt 5:17-20; Luke 16:16-17).³⁰⁴

Therefore, I concur with the assertion that love is the bible's core message; but, God's love should not be construed to mean acceptance of sinful behaviour.

The Analogy of Inclusion of Gentile Inclusion

The story of the Gentiles' inclusion into the church (Acts 10–11) serves as a model for the modern church to welcome gays and lesbians as full members of the church.³⁰⁵ The contention is that, like homosexuals today, Gentiles were treated among the first generation of Jewish Christians with revulsion. The Gentiles were regarded as sinful and unclean in the eyes of God; therefore, they could not be granted membership in the church as Gentiles but only converts to Judaism.³⁰⁶

Peter gave up his long-held assumptions and came to a more open view concerning the Gentiles. Peter's change of heart stemmed in part from his personal contact with Cornelius and his recognition that Cornelius truly was a person of faith. Peter ultimately stated, "I truly understand that God shows no partiality, but in every nation anyone who fears him and does what is right is acceptable to him" (Acts 10:34-35). Peter's experience sheds light on how Christians today might approach issues

³⁰⁴ Ibid.

³⁰⁵ Timothy Johnson, *Scripture and Discernment: Decision Making in the Church*, Nashville: Abingdon Press, 1996.

³⁰⁶ Jeffrey S. Siker, "Homosexual Christians, the Bible, and Gentile Inclusion: Confessions of a Repenting Heterosexist. Homosexuality in the Church: Both Sides of the Debate" (1994), pp. 178-191.

related to homosexuality. As heterosexual people get to know devout gay and lesbian people of faith, they may well be "forced to reconsider long-held assumptions and interpretations of Scripture" and come to see God as showing no partiality.³⁰⁷

This analogy of the Gentiles inclusion into the church as the basis for embracing homosexuality breaks down at four points. First, being a Gentile is not like being a homosexual. Gentile ethnicity has to do with ancestry and paganism or idol worship while homosexuality arises from a complex array of factors: nurture, environment, and choice.³⁰⁸ Hence, the two variables do not correlate.

Second, in the case of same-sex intercourse, the Bible is primarily condemning an activity or form of behaviour, not a state of being. Same-sex intercourse constitutes both a desire and behaviour while being Gentile is not in itself a desire or behaviour.³⁰⁹

Third, unlike the Bible's stance on same-sex intercourse, the Bible is not unequivocally and univocally opposed to Gentiles. Christians could find legitimization for the inclusion of Gentiles in Scripture itself, whereas no such legitimization could be given for same-sex intercourse.³¹⁰

Fourth, in complete contrast to the issue of same-sex intercourse, the attitude toward Gentiles taken by New Testament authors was one of affirmation of Gentile entry into the church provided they expressed faith in Christ. Thus the canonical case for affirming same-sex intercourse is a long way off from the canonical case for the inclusion of Gentiles.³¹¹

Thus, I am of the opinion that the analogy of gentile inclusion in the Early Church fails to justify the contemporary inclusion of homosexuals

³⁰⁷ David G. Myers and Letha Dawson Scanzoni, *What God Has Joined Together? A Christian Case for Gay Marriage*, HarperSanFrancisco, 2005.

³⁰⁸ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid.

into the modern church. Since the gentiles were only accepted into the church after they had repented, expressed faith in Christ, and were baptized.

What then is the way forward as far as the homosexual debate in Malawi is concerned, that might hold God's people together? At this stage of the debate, it is unlikely that either side of the debate will convince the other. Attitudes have hardened. The debate has been raging on for centuries and neither side really has anything more to add. People cannot be asked to go against their consciences and convictions. We cannot force people to agree with us. So must we go our separate ways?³¹²

I have outlined several proposals that can inform the Church in Malawi and elsewhere to practically engage with the homosexual debate.

Christian scriptures strongly and unequivocally reject homosexuality. Arguments presented by advocates of homosexuality to undermine the contemporary relevance of Scripture are weak. Scripture rejects homosexual *behaviour* because it is a violation of the gendered existence of male and female, ordained by God at creation.³¹³

Therefore, the real challenge for the church in regard to the homosexual debate lies in its pastoral dimension. The pastoral task entails a compassionate response to people whose sexual actions are recognized to be sinful and harmful to them, to the church, and to society at large.³¹⁴

The church should minister compassionately to people who are homosexually inclined, for whatever reason.³¹⁵ We cannot treat all people struggling with homosexuality in the same way. The causative dynamics interrelated to sexual attraction to same-sex persons or strong desires

³¹² Ronald Nicholson, *The Church and Same-Sex Marriage*, Pietermaritzburg: Cluster, 2008.

³¹³ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

³¹⁴ Ibid.

³¹⁵ Joseph Ratzinger, "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons," 1986, (12.1.2016).

for homosexual relations need to be assessed in the context of pastoral care.³¹⁶ A listening ear that is willing to reflect on family dynamics, personal pilgrimage, past hurts, and failed goals is an important part of the pastoral task. Most important, an effort must be made to understand the person as a person wholistically, and not just as a homosexual.³¹⁷

A related but equally important task is pastoral care of parents whose son is gay or daughter is lesbian. How do we listen to their stories, anguish, and point of view? In the congregational setting, it would be wise to pull together a small group that functions as the care-giving resource, with primary commitment to listen, care, pray, and support in friendship. Not everyone in the group needs to have the same point of view on the matter, but only to be committed to listen, discern, and speak in love what they through prayer come to discern as God's word for the situation.³¹⁸

The church can be an instrument of both help and healing to parents who are trying to cope with the discovery of homosexuality in a child, when their son or whose daughter has made it known to them that he or she has a homosexual orientation.³¹⁹

The church should help the parents to accept and love themselves as human beings created in God's image in order to accept and love their son or daughter. Moreover, they should not blame themselves for a homosexual orientation in their child.³²⁰

³¹⁶ Willard Swartley, *Homosexuality: Biblical Interpretation and Moral Discernment*, Scottdale, PA: Herald Press, 2003.

³¹⁷ John A. Struzzo, "Pastoral Counselling and Homosexuality," *Journal of Homosexuality* 18.3-4 (1989), pp. 195-222.

³¹⁸ Willard Swartley, *Homosexuality: Biblical Interpretation and Moral Discernment*, Scottdale, PA: Herald Press, 2003.

³¹⁹ Erik F. Strommen, "Family Member Reactions to the Disclosure of Homosexuality," *Journal of Homosexuality* 18.1-2 (1989): 37-58.

³²⁰ Kate Harrison, "Child Custody and Parental Sexuality: Just another Factor," *Legal Service Bull.* 6 (1981), p. 169.

Parents should be encouraged to do everything possible to continue demonstrating love for their children. However, accepting his or her homosexual orientation does not have to include approving all related attitudes and behavioural choices. In fact, you may need to challenge certain aspects of a lifestyle which are objectionable.³²¹

Along these lines, I am of the view that the Church should create a spiritual atmosphere that provides strength and support to parents of homosexual children at this moment in their family's life and in the days to come.

Admitting People with a Homosexual Orientation to Membership

Counselling and pastoral care should be given long before church membership questions are considered. We must know people well before we can mediate healing, and pledge brotherly or sisterly care.³²²

There should be no impediment to church membership for someone with a homosexual orientation or who prefers to remain celibate, or does not endorse homosexual behaviour, but gives every evidence of wanting to remain committed to the Bible's and the church's teaching on homosexuality.³²³ If a homosexual person comes to a congregation from another congregation and requests membership, the person's status in the congregation from which she or he has come needs to be ascertained and carefully assessed. A congregation would need some extended time to learn to know and care pastorally for the person before membership is considered. If after such care the person is not ready to commit to the standard of the church in this regard, membership may be delayed with a re-evaluation date set also. Such caution

³²¹ "Always our Children: A Pastoral Message to Parents of Homosexual Children and Suggestions for Pastoral Ministers, A Statement of the Bishops Committee on Marriage and Family National Conference of Catholic Bishops," www.usccb.org/...and-dignity/homosexuality/always-our-children.cfm, (12.1.2016).

³²² Willard Swartley, *Homosexuality: Biblical Interpretation and Moral Discernment*, Scottsdale, PA: Herald Press, 2003.

³²³ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

should be taken because the church has not walked this way before. Indeed, pastoral care and spiritual discernment are needed every step of the way.³²⁴

In order to join as a church member, or continue in good standing, a person with a homosexual orientation should abstain from homosexual intercourse or, in cases of backsliding, a willingness to repent should be adequate. In addition, even to those who cannot meet these minimal standards for membership, the church should show hospitality in other ways i.e. welcoming them as visitors to church meetings and reaching out to them in their homes. Through these means, the church will have opportunities to communicate the gospel message to homosexuals.³²⁵

Provide Counselling

The next step for the church in practically engaging with people who are struggling with homosexuality is to provide counselling. Christian counselling in relation to homosexuality can be dealt with from two viewpoints. These are: (1) as demon possession; and (2) as a conduct disorder.³²⁶

This first approach perceives homosexuality as caused by demons. Demonic spirits can invade and live in human bodies. Upon indwelling a person, they take advantage of that person. When the demons indwell an individual, the person is either said to "have" or "is possessed by" demons.³²⁷

The approach that homosexuality is caused by demons is associated with Pentecostal and Charismatic Christians. Thus, they believe that sexual orientation change is possible through prayer and deliverance from demonic influence. For instance, Pastor Joseph Ziba of Fountain of

³²⁴ Willard Swartley, *Homosexuality: Biblical Interpretation and Moral Discernment*. Scottdale, PA: Herald Press, 2003.

³²⁵ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

³²⁶ www.exodusglobalalliance.org/, (3.6.2016).

³²⁷ Frank Hammond and Ida Mae Hammond, *Pigs in the Parlor - A Practical Guide to Deliverance*, Kirkwood, MO: Impact Christian Books, 1973.

Victory International Ministries in Malawi paraded four girls in a church service at the Great Hall, Zomba, who testified that they had been delivered from a lesbian lifestyle.³²⁸ Also, Prophet T.B. Joshua of the Synagogue Church of All Nations (SCOAN) claimed to have delivered Thaddeus, a gay Nigerian man, and made him straight or heterosexual. Sharing his testimonies during a live programme on Emmanuel TV, Thaddeus revealed that a 'gay' demon has been chased out of him after an encounter with Prophet T.B. Joshua's Wise Men.³²⁹

Therefore, according to the Pentecostals and Charismatics, Christians who are struggling with homosexuality can be prayed for and delivered from such demonic afflictions.

To see homosexuality as a conduct disorder is the position most widely held by Christian psychologists and therapists. It holds that homosexuality is caused by childhood trauma(s), which impede a person's appropriate psychosexual development.³³⁰ A homosexual person suffers from a lack of identification with the same-sex parent and that, upon entering puberty, the unsatisfied childhood needs are eroticized, which results in the individual seeking to fulfil these legitimate needs with people of the same gender. This would explain the lack of emotional maturity found in many people that suffer from such difficulties of sexual orientation, since an important aspect of their personality was not fully developed.³³¹ This approach which is associated with all conservative Christian churches considers homosexual behaviour as sinful or a disease. A significant distinction between homosexual behaviour (where homosexual acts are practiced) and homosexual orientation (where there exists an attraction for persons of the same sex, but there is no practice of homosexual acts; in fact, there are situations where the person rejects such feelings and desires).³³² The Bible does not

³²⁸ Interview, Chancellor College, Zomba, (10.10.2014).

³²⁹ Adenike Orenunga, "Prophet TB Joshua Delivers a Gay Nigerian, Makes him Straight," *Daily Post*, (27.1.2014).

³³⁰ www.exodusglobalalliance.org, (3.6.2016).

³³¹ E. Moberly, *Homosexuality: A New Christian Ethic*, London: Lutterworth Press, 1983.

³³² www.exodusglobalalliance.org, (3.6.2016).

condemn homosexual orientation, although fostering fantasies and homosexual thoughts can lead an individual to commit the sin of lust (in the same way that this occurs with heterosexual persons). This difference is very important for those who counsel individuals struggling with difficulties in their sexual orientation because it offers them a "shelter" from Biblical condemnation during the transition process that healing entails.³³³

Individuals who are struggling with homosexuality have no power over what was done to them as children (which produces the orientation) but they do have power over their acts (practice of homosexual behaviour). This gives the client a "safe place" which allows the psychotherapy or counselling to become fruitful. Now the focus of the condemnation is not on who the person is, but on the behaviour, over which he or she has control.³³⁴ I am of the view that the Holy Spirit has power for changing a person's homosexual orientation. The process of counselling people who are struggling with homosexuality takes time before yielding positive results. The causative dynamics interrelated to sexual attraction to same sex persons or a strong desire for homosexual relations need to be assessed first. This task requires a listening ear to an individuals' experience and an effort to understand the homosexual as a person and not as a homosexual.³³⁵

Stanley Strong presents a therapeutic method for helping homosexuals change orientation through Christian counselling. He observes that Christian counselling for changing homosexual behaviour begins by helping the client accept God's love for him or her as a homosexual. Trusting in the power of the Holy Spirit, the client is freed from resentments, desensitized to heterosexual aversions, and systematically

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Willard M Swartley, *Homosexuality, Biblical Interpretation and Moral Discernment*, Scottdale: Herald Press, 2003.

helped to develop a heterosexual life-style using cognitive, behavioural, and spiritual methods.³³⁶

There is forgiveness for homosexual activities, the same as there is forgiveness for adultery, fornication, and incest. Forgiveness comes through the sacrifice of Jesus for our sins and by faith turning away from those actions, which are against God's will.³³⁷

Church Discipline

Church discipline is the practice of censuring church members when they are perceived to have sinned in hope that the offender will repent and be reconciled to God and the church.³³⁸ Church discipline involves the exercise of authority given to the church by the Lord Jesus Christ to instruct and guide its members and their children and to promote its purity and welfare.³³⁹ The purpose of church discipline is the spiritual restoration of fallen members and the consequent strengthening of the church and glorifying of the Lord. When a sinning believer is rebuked and he turns from his sin and is forgiven, he is won back to fellowship with the body and with its head, Jesus Christ.³⁴⁰

In the mind of God, church discipline is not optional.³⁴¹ Therefore, disciplining church members who are in error should always be a priority of the leaders in the church. This process should be done without fear or favour for many reasons. First, God wants discipline because it is consistent with Scripture. The church gets the example from the Lord Jesus Himself who disciplines the children He loves "because the Lord

³³⁶ Stanley R. Strong, "Christian counselling with homosexuals," *Journal of Psychology and Theology* (1980), www.psycnet.apa.org (3.6.2016).

³³⁷ <http://livingwaterchristiancounseling.org>, (3.6.2016).

³³⁸ J. Carl Laney, "The Biblical Practice of Church Discipline," *Bibliotheca Sacra* 143 (Oct. 86), p. 354.

³³⁹ Evangelical Presbyterian Church, *Book of Order, Book of Discipline*, Brighton, MI: Evangelical Presbyterian Church, 2004.

³⁴⁰ Pastor John MacArthur, Church Discipline, PDF, (12.1.2016).

³⁴¹ "In the name of the Lord Jesus Christ, we command you, brothers, to keep away from every brother who is idle and does not live according to the teaching you have received from us" (2 Thess 3:6).

disciplines those he loves, and he punishes everyone he accepts as a son" (Heb 12:6). The Lord Jesus has left the responsibility to the church of administering discipline to those who are members of the church (1 Cor 5:12-13).³⁴²

The second basis for church discipline is the holy character of God. "But just as he who called you is holy, so be holy in all you do; for it is written: 'Be holy because I am holy'" (1 Peter 1:15-16). God's desire for the church is that it should be holy. It cannot remain holy without cleaning its house and ridding it of sin. Failure to exercise discipline in the church is a manifestation that the church does not appreciate the holiness of God. Third is the fact that church discipline is a fully developed doctrine backed by Scripture (1 Cor 5:1-13; Mat 18:17-18; Tit. 3:10; 1 Tim 5:20; Gal 6:1 and 2 Thess 3:6). Fourth consideration for church discipline is the good behaviour from the church that is supposed to be emulated by the world, "Live such good lives among the pagans that, though they accuse you of doing wrong, they may see your good deeds and glorify God on the day he visits us" (1 Pet 2:12). Fifth basis is the testimony of the church in the world (1 Pet 4:13-19). The world observes the behaviour and life of the church. When the church acts no differently from the world, it loses its credibility and authenticity (1 Pet 2:11-18; 3:8-16; 4:1-4). As people see discipline being administered, an atmosphere of godly fear is automatically developed (Tim 5:20). Church discipline in many ways silences critics of the church who sometimes use sinning believers as entry points to ridicule the gospel of our Lord Jesus.³⁴³

The sixth basis for church discipline is that it glorifies God in the sense that the church demonstrates obedience to God's commands. Seventh is the fact that it maintains the purity of the church in her worship. The eighth consideration is that discipline helps to restore, heal and build up believers who have stumbled because of sin (Mat 18:15; 2 Thess 3:14-

³⁴² Moses Mlenga, "A Critical Examination of the Issue of Polygamy in the Synod of Livingstonia: Biblical, Moral and Missiological Implications," PhD, Mzuni, 2013.

³⁴³ Moses Mlenga, *Polygamy in Northern Malawi. A Christian Reassessment*, Mzuzu: Mzuni Press, 2016.

15; Heb 12:10-13; Jam 5:20 and Gal 6:1).³⁴⁴ The ninth basis is that discipline deters others from committing similar sin (1 Tim 5:20). Tenth is the consideration that church discipline prevents giving God a chance to deal with the congregation (Rev 2:14-25).³⁴⁵

Therefore, if same-sex intercourse is sin, churches must make hard decisions regarding membership and discipline. If a church body (whether a denomination or local congregation) has no problems with enrolling or retaining as a member someone engaged in persistent and unrepentant acts of incest, polygamy, adultery, prostitution, or fornication, then practicing, self-affirming homosexuals should be fully accepted as well.³⁴⁶ However, if a church body would deny membership to such persons or put those who are already members under church discipline, then the same should be applied to practicing and unrepentant homosexuals. The key here is not whether the person is homosexually inclined but whether he or she is having same-sex intercourse and doing so in a "self-affirming" manner. The church can and ought to be generous in extending numerous opportunities for the homosexual who backslides into homosexual intercourse to be restored to the community of faith (Luke 17: 3-4; Matthew 18:21-22).³⁴⁷

The church should be concerned about allowing members to be free to engage in homosexuality, indefinitely refusing to repent, and substituting their own moral standards of behaviour for those of scripture without any expectation of sanctions implemented by the church. If persons indefinitely refuse to repent of such acts, then some type of ecclesiastical discipline is surely called for. Otherwise, it is impossible to make sense of Paul's approach to the comparable issue of a man engaged in incest in 1 Corinthians 5.³⁴⁸

³⁴⁴ J. Hampton Keathley, III, "Church Discipline" <http://bible.org/byauthor/23/J.HamptonKeathley>, (12.10.2010).

³⁴⁵ Ibid.

³⁴⁶ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

Jesus' directives concerning church discipline begin by reflecting his concern for "your brother" (Matthew 18:15-20). Church discipline concerns those within her ranks. The church does not carry ecclesiastical power over those outside the fold of Christ. Consequently, Jesus begins his prescription on church discipline by noting that His injunctions refer only to those within the church.³⁴⁹

Paul in 1 Corinthians 5: 6-8, talks about the benefit to the church when corrective discipline is employed as well as the detrimental effects to the church when it is absent. If sin is not confronted and dealt with properly, then the integrity of the church is in jeopardy. Paul employs the leavening metaphor for sin in illustrating the effects of uncorrected wickedness. A little yeast can and does affect the entire lump of dough (1 Cor 5:6). Paul then ties the metaphor to the Passover feast in highlighting the holy status of the church.³⁵⁰ In other words, the church as the salt and light of the world (Mat. 5:13-16) has a divine mandate to maintain its holy standard and not to bow down to worldly standards.

It is noteworthy that the purpose of discipline is the restoration of the brother or sister and not unnecessary humiliation.

True elders do not command the consciences of their brethren, but appeal to their brethren to faithfully follow God's Word. Discipline is done out of love, true elders suffer and bear the burden of difficult people and problems so that the lambs are not bruised. They bear the misunderstanding and sins of others so the assembly may live in peace. They make great personal sacrifices of time and energy for the wellbeing of others. They see themselves as men under authority. They depend on God for wisdom and help, not on their own power and cleverness. They guard the community's liberty and freedom in Christ so that the

³⁴⁹ D.A. Carson, *Matthew: Expositor's Bible Commentary*, Vol. 8, Frank E. Gaebelein (ed.), Grand Rapids: Zondervan, 1984.

³⁵⁰ Don E. Galardi, *Corrective Church Discipline, A Study in Scripture*, The Reformed Heritage, and the Evangelical Presbyterian Church, Owosso, MI: Community EPC, 2006.

saints are encouraged to develop their gifts, to mature, and to serve one another.³⁵¹

Excommunication

Excommunication is an institutional act of religious censure used to deprive, suspend, or limit membership in a religious community or to restrict certain rights within it, in particular reception of the sacraments.³⁵² The word *excommunication* means putting a specific individual or group out of communion.³⁵³

A lengthy process of counselling and warning an individual should precede the sanction of excommunication.³⁵⁴ When the sinner refuses to heed admonition to repent, after being disciplined, then the final step of excommunication should be taken. This is more than simple exclusion from the Lord's Supper; it means the elimination from the total life of the church.³⁵⁵

Paul uses the phrase "Deliver this man to Satan" (1 Cor 5: 5) to refer to excommunication and is equivalent to purging the evil from the church (cf. 1 Cor 5: 13).³⁵⁶ Handing someone over to Satan is akin to the prescription Jesus gave His disciples: treat an unrepentant sinner as a pagan or a tax collector (Matt 18:17). The command to deliver someone to Satan has a parallel in another epistle where Paul writes about some people shipwrecking their faith. "Among them are Hymenaeus and

³⁵¹ Neil M. Lines, "Church Discipline: Ruination or Restoration," DMin, Western Conservative Baptist Seminary, 1982.

³⁵² Francis Edward Hyland, *Excommunication: Its Nature, Historical Development and Effects*, Washington, DC: Catholic University of America; 1928.

³⁵³ Amy Nelson Burnett, "Church Discipline and Moral Reformation in the Thought of Martin Bucer," *The Sixteenth Century Journal* (1991), pp. 439-456.

³⁵⁴ Don E. Galardi, *Corrective Church Discipline, A Study in Scripture*, The Reformed Heritage, and the Evangelical Presbyterian Church, Owosso, MI: Community EPC, 2006.

³⁵⁵ Amy Nelson Burnett, "Church Discipline and Moral Reformation in the Thought of Martin Bucer," *The Sixteenth Century Journal*, Vol. 22, No. 3 (1991), pp. 438-456.

³⁵⁶ Don E. Galardi, *Corrective Church Discipline, A Study in Scripture*, The Reformed Heritage, and the Evangelical Presbyterian Church, Owosso, MI: Community EPC, 2006.

Alexander, whom I have handed over to Satan to be taught not to blaspheme" (1 Tim 1:20, NIV).³⁵⁷

Thus, homosexuals who refuse to repent of their sin can be excommunicated from the church. Although the individual who is excommunicated has rights of freedom of association as stated in Section 32 of the Malawi Constitution,³⁵⁸ the Church's rights as a religious organization should be respected as well.

Conclusion

The final word on the subject of homosexuality is and should always be: love God and love the homosexual neighbour. The homosexual and lesbian are not the church's enemies, but, people in need of the church's support for restoring to wholeness their broken sexuality through compassion, prayer, humility, and groaning together for the redemption of our bodies.³⁵⁹ The old saying "Hate sin but not the sinner" holds true. It may sound simplistic, but it goes right to the heart of the gospel.³⁶⁰

The Future of the Homosexuality Debate

The previous chapters of this book have shown that there is no consensus in the homosexuality debate in Malawi and worldwide. Both sides of the debate have produced views either for or against the phenomenon of homosexuality. In view of this observation, legalization or criminalization of homosexuality may not be the answer to the homosexual debate. Therefore, the most important question is: "What is the way forward in the homosexuality debate?" or "What are the prospects of the homosexuality debate in Malawi and worldwide?"

³⁵⁷ Simon J. Kistemaker, "Deliver this Man to Satan" (1 Cor 5:5): A Case Study in Church Discipline" *TMSJ* 3/1 (Spring 1992), pp. 33-45.

³⁵⁸ Section 32, Freedom of Association, www.sdn.org.mw/constitution/intro.html, (3.6.2016).

³⁵⁹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

³⁶⁰ David Wright, *The Christian Faith and Homosexuality*, Edinburgh: Rutherford, 1994.

Harmonious Co-existence of both Heterosexual and Homosexual People

Chapter 3 of this book has shown the prevalence of homosexuality in Malawi. Suzgo Khunga reports that the homosexual population in Malawi is estimated to be 40,000 people.³⁶¹ Therefore, Malawi can be broadly sexologically dichotomized into: heterosexual and homosexual (lesbian, gay, bisexual, transgender, and intersex) people. However, all of them are Malawian citizens as stipulated in Section 47 (1) of the constitution of the Republic of Malawi.³⁶² No one can claim either to be more Malawian than the other or chase the other out of Malawi based on his or her sexual orientation. Consequently, I am of the view that the prospect of the homosexual debate lies in the harmonious co-existence of both heterosexual and homosexual people in Malawi and worldwide.

One way in which Malawians can create the proposed harmonious co-existence of both heterosexual and homosexual people within society is by practicing mutual tolerance.

Tolerance as the Key

The word "tolerance" can be defined as the ability or willingness to tolerate something, in particular the existence of opinions or behaviour that one does not necessarily agree with.³⁶³ Toleration may signify "no more than forbearance and the permission given by the adherents of a dominant heterosexual orientation for other homosexual orientations to exist, even though the latter are looked on with disapproval as inferior, mistaken, or harmful."³⁶⁴

Therefore, for Malawi as a nation to achieve a harmonious co-existence in society then both sides of the homosexual debate should practice mutual tolerance in view of fact that society already tolerates the choices of drunkards and polygamists. Similarly, heterosexuals should accept those who have chosen homosexuality as their lifestyle.

³⁶¹ Suzgo Khunga, "A Study Finds Malawi has 40 000 Gays," *The Nation*, (26.2.2015).

³⁶² www.sdn.org.mw/constitut/dtlindx.html (6.5.2016).

³⁶³ dictionary.cambridge.org/.../tolerance (6.5.2016).

³⁶⁴ Ibid.

Tolerance and Homophobia

The first reason for heterosexual Malawians to exercise tolerance towards homosexual Malawians is because homophobia is rife in Malawian society. Police in Lilongwe arrested Limbani Kukhase in Area 49, Lilongwe, on 24 May 2016. Limbani Kukhase, a bisexual, was rescued by police and whisked away for his own safety from a mob justice punishment when it was discovered that the suspect was a male gay-prostitute. Kukhase was hired for sex by a man in Area 49, Lilongwe, who later discovered that he was male and called for help from the community.³⁶⁵ CEDEP and CHRR launched a report on human rights violations which claimed that there was an increase of homophobia in Malawi.³⁶⁶ These reports demonstrate that LGBT people in Malawi are subjected to homophobia based on their sexual orientation and homosexual practice.

Therefore, homophobia should be condemned by all Malawian citizens of goodwill in order to ensure the safety of homosexual citizens who risk both verbal and physical violence.

The second reason for heterosexual Malawians to exercise tolerance towards homosexual Malawians is that the phenomenon of homosexuality is considered intolerable in many African nations. A 2016 AfroBarometer survey found that Africans are more tolerant on religion, ethnicity, nationality, and HIV, but not on homosexuality.³⁶⁷ In results published on Zero Discrimination Day (1 March), AfroBarometer reports that survey respondents in 33 countries exhibit largely tolerant attitudes toward social differences, with the major exception of homosexuality. Even so, homophobia is not a universal phenomenon in Africa. At

³⁶⁵ Owen Khamula, "Malawi Police save Male Prostitute from Mob Justice," (26.4.2016).

³⁶⁶ Fazila Tembo, "Report Shows Increasing Homophobia in Malawi," *Nyasa Times*, (15.10.2014).

³⁶⁷ www.afrobarometer.org/press/tolerance-in-africa, (10.6.2016).

least half of all citizens in four African countries (Cape Verde, Mozambique, Namibia, and South Africa) say they would not mind or would welcome having homosexual neighbours.³⁶⁸

A recent "*AfroBarometer Tolerance Index*" claimed that only six out of every hundred Malawians would tolerate a homosexual person as their neighbour. This is despite the fact that Malawi was ranked the most tolerant state out of the thirty three African countries measured.³⁶⁹ Therefore, based on these findings, heterosexual Malawians who are already exercising tolerance in areas of religion, nationality and HIV/AIDS, should be sensitized to equally demonstrate it towards homosexual neighbours in the community.

The third reason for heterosexuals to exercise tolerance towards homosexuals is that homosexuals are a minority group. Herek argues that lesbian, gay, bisexual, and transgender (LGBT) people can be classified as a minority group because they manifest four important factors which characterize minority groups. First, gay people comprise a subordinate segment within a larger complex state society. Second, they manifest characteristics that are held in low esteem by the dominant segments of society. Third, they are self-consciously bound together as a community by virtue of these characteristics. Fourth, they receive differential treatment based upon these characteristics, ranging from discrimination to assault and victimization.³⁷⁰ Therefore, heterosexual Malawians should tolerate the minority group of homosexuals who comprise a small proportion of the population of Malawi and the entire world.

³⁶⁸ Ibid.

³⁶⁹ Rex Chikoko, "Malawi Ranked Second on Tolerance Index," *The Nation*, (8.3.2016).

³⁷⁰ G.M. Herek, "Hate Crimes against Lesbian and Gay Men: Issues for Research and Policy," *American Psychologists*, 44 (6) (1989), pp. 948-949.

Homophobia

Homophobia originally meant "an irrational fear of homosexual persons."³⁷¹ Expressions of homophobia can range from innocuous assumptions regarding heterosexuality to vicious incidents of anti-gay violence.³⁷² Chapter 2 and 4 of this book presented a discussion on homophobic practices in Malawi and Africa respectively. They highlighted the fact that homophobia is fuelled by politicians, religious leaders and traditional leaders. In some cases, like in Uganda and South Africa, it has led to the death of gay rights activists³⁷³ and rape of lesbians as a way of "curing" them from homosexuality.³⁷⁴

Africa has been highlighted as a homophobic continent for two reasons. First, the most striking image is a map of the world created by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) highlighting countries with laws criminalizing homosexuality. Africa and the Middle East stand out.³⁷⁵ Second, the Pew Research Center conducted a survey on homosexuality from 39 countries and reported a widespread rejection of homosexuality in Africa.³⁷⁶ According to the International Lesbian and Gay Association, African state sponsored homophobia is executed through the criminalization of homosexuality which is an offense punishable by imprisonment, or even death.³⁷⁷

³⁷¹ Allister Butler and Gaynor Astbury, *Gay and Lesbian Youth Experiences of Homophobia in South African Secondary Schools*, PDF, (16.6.2016).

³⁷² Ibid.

³⁷³ David Kato, a gay rights activist, was beaten to death at his home in Uganda in what is believed to be a homophobic attack.

³⁷⁴ *Hate Crimes: The Rise of "Corrective" Rape in South Africa*, *Action Aid*, March 2009.

³⁷⁵ *The Lesbian, Gay and Bisexual Map of World Laws*, www.ilga.org, May 2015, (16.6.2016).

³⁷⁶ *The Global Divide on Homosexuality*, www.pewresearch.org, (16.6.2016).

³⁷⁷ old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf, (16.6.2016).

Religious Intolerance towards Homosexuals

Religion is one of the factors that hinder the legalization of homosexuality in Malawi.³⁷⁸ Chapter 2 of this book has presented some religious homophobic hate speech calling for the execution of homosexuals in Malawi. For instance, Sheikh Dr Salmin Omar Idrussi, the Secretary General of the Muslim Association of Malawi (MAM) called for the execution of gays in February 2014.³⁷⁹ Apostle Chilenje of the Jesus Pentecostal Church equally called for the execution of gays in Malawi.³⁸⁰ These two statements exemplify religious homophobia.

Omar Mateen killed 50 people and injured at least 53 at a gay night club in Orlando, Florida, United States on June 12, 2016.³⁸¹ This terrorist shooting can be considered as the deadliest incident of violence against LGBT people in US history. The 29-year-old assailant was identified as an American born to parents of Afghan background, who pledged alliance to the religious extremism ideology of the Islamic State (ISIL).³⁸² This study argues that religious intolerance towards homosexuality has serious ramifications for society as can be seen in the Orlando homophobic shootings.

Robert Lynch, the Catholic Bishop of St. Petersburg, Florida, expressed his shock at the homophobic massacre and acknowledged that a root cause was anti-LGBT sentiment embedded in many faith communities-including the Catholic Church. He said that:

Sadly it is religion, including our own, which targets, mostly verbally, and also often breeds contempt for gays, lesbians and

³⁷⁸ Manuel Malamba, "The Controversy of Homosexuality: A Critical Look at the Issues that make Legalizing Homosexuality in Malawi Difficult," MA, Roehampton University, 2012.

³⁷⁹ Zawadi Chilunga, "Kill the Gays! Penalty Proposed by Muslim Association of Malawi," *Nyasa Times*, (17.2.2014).

³⁸⁰ Joseph Mulenga, "How Sociology enriches Human Rights: The Case of Malawi's First Openly-gay Couple," PDF, 2012, p. 103.

³⁸¹ Matthew Teague, Spencer Ackerman, and Michael Safi, "Orlando Nightclub Shooter Omar Mateen was Known to FBI, Agent Says," *The Guardian*, (12.6.2016).

³⁸² *Ibid.*

transgender people. Attacks today on LGBT men and women often plant the seed of contempt, then hatred, which can ultimately lead to violence. Those women and men who were mowed down early yesterday morning were all made in the image and likeness of God. We teach that. We should believe that. We must stand for that ... Singling out people for victimization because of their religion, their sexual orientation, their nationality must be offensive to God's ears. It has to stop.³⁸³

The church should accept people with a homosexual orientation as members or ministers if they remain celibate.³⁸⁴ However, I am of the opinion that the imposition of celibacy on homosexuals is tantamount to homophobia or religious intolerance towards homosexuals. One should become celibate because of personal choice rather than through a religious imposition on an individual.

The previous section of this book has discussed issues of church discipline and excommunication as one way in which the church can deal with the issue of homosexuality. However, I am of the view that church discipline and excommunication should not be used as a way of punishing homosexuals, but should properly be used as a way of restoring homosexuals back to a relationship with God and the community of faith. If church discipline and excommunication are used to punish homosexuals, then that is tantamount to religious intolerance towards homosexuals.

Tolerance and Heterophobia

Heterophobia is the supposed "fear and mistrust" of heterosexual people, presumably by non-heterosexuals. It is an intentionally anti-gay neologism meant to be used against the LGBT community as a snarl word designed to delegitimize the gay rights movement, its campaign

³⁸³ <http://thinkprogress.org/lgbt/2016/06/15/3788927/faith-leaders-condemn-homophobia>, (17.6.2016).

³⁸⁴ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

for equal treatment, and aim to end anti-gay bigotry.³⁸⁵ The term implies that, rather than reacting to anti-gay rhetoric, gay rights advocates are in fact speaking out against heterosexuality and heterosexuals in a demeaning or bigoted manner. This phraseology attempts to equate the fight against bigotry with bigotry itself.³⁸⁶

Religious Intolerance by Homosexuals

This book has identified religion as one of the factors hindering the legalization of homosexuality in Malawi. Consequently, the homosexual agenda has mounted its attack on religious faiths which teaches against homosexual practice. In Malawi, Christianity and Islam are the dominant religions which condemn homosexual practice. Therefore, homosexual citizens should be able to tolerate people who believe that homosexual practice is sinful and not call such people bigots. Moreover, when same sex marriages will be legalized in Malawi, homosexual citizens should know that religious ministers will not be obligated to officiate gay weddings contrary to their conscience and religious doctrines. Also, churches, mosques, or any other religious premises will not be used as venues for officiating or celebrating same-sex weddings because the owners of such premises do not approve it. This will be in tandem with the constitution of the Republic of Malawi which stipulates in Section 33 that: "Every person has the right to freedom of conscience, religion, belief, and thought, and to academic freedom."³⁸⁷ Therefore, homosexual Malawian citizens should be able to tolerate difference of opinions, beliefs, cultural values cherished by the majority of Malawian citizens who are heterosexuals.

³⁸⁵ <http://rationalwii.org/wiki/Heterophobia>, (17.6.2016).

³⁸⁶ Ibid.

³⁸⁷ www.sdn.org.mw/constitut/dtlindx.html (6.5.2016).

Tolerance and Legalization of Homosexuality

The Malawi Government, which has legislation that criminalizes homosexuality, can demonstrate tolerance to homosexuals by decriminalizing homosexuality.³⁸⁸

There are at least six reasons for decriminalizing homosexuality in Malawi. These include: (1) there is no consensus regarding the definitions and causes of homosexuality. Thus, I argue that the decriminalization of homosexuality can demonstrate government's commitment to tolerance as a key for achieving a harmonious co-existence of both heterosexual and homosexual people in Malawi. (2) This study has identified personal choice as one of the causes of homosexuality. Therefore I argue that homosexuality should be decriminalized because some practices which people engage in as a result of personal choice are not criminalized i.e. beer drinking, smoking, adultery, polygamy etc. (3) Homosexuality is not a crime per se, since, the criminality of adult-consensual homosexual acts done in private cannot be properly established. (4) Homosexuality is part of African culture. It has existed in Africa before colonialism, after colonialism, and even now. Therefore, criminalizing homosexuality on the basis of culture is illogical. (5) The prevalence of homosexuality in Malawi, Africa, and the entire world shows that the phenomenon of homosexuality is here to stay and will continue to be practiced by future generations. Therefore, criminalizing homosexuality is not a solution since nothing can stop the existence of homosexuality in society. (6) International human rights instruments are not explicit on the protection of LGBT rights. In other words, they are inadequate in ensuring the protection of sexual minorities because they do not single out sexual orientation as a basis for discrimination. Therefore, I argue that the government can demonstrate tolerance by decriminalizing homosexuality and ensuring the protection of the minority group of homosexuals in society.

³⁸⁸ The Constitution of Malawi criminalizes homosexuality in four provisions of the penal code: Section 137A, Section 153, Section 154, and Section 156.

In view of the above stated reasons for the decriminalization of homosexuality, I make the following four recommendations to the Government of Malawi: (1) The government should decriminalize homosexuality. (2) The government should enforce mutual tolerance by both heterosexual and homosexual people. (3) The government should criminalize any form of homophobia and heterophobia. (4) The government should take a leading role in educating society by carrying out sensitization campaigns on gay rights, tolerance and acceptance of diversity.

Christians should work toward a society that neither prosecutes nor promotes homosexual behaviour. This means that Christians should support the decriminalization of homosexual behaviour and full prosecution of crimes against homosexuals though they are in no way required to approve homosexuality.³⁸⁹

Therefore, I argue that the scrapping of anti-sodomy laws in Malawi will be a clear indication of tolerance towards LGBT people. It will guarantee equality and ensure protection of human rights for all Malawians.

There is no consensus on each and every factor discussed in this chapter. Nevertheless, I argue that tolerance is the key factor in achieving a harmonious co-existence of both heterosexual and homosexual people in Malawi.

³⁸⁹ Robert Gagnon, *The Bible and Homosexual Practice, Texts and Hermeneutics*, Nashville: Abingdon Press, 2001.

Chapter 9: Conclusion and Implications

In summing up this book, I want to highlight four critical observations.

The first major observation is that Malawians have participated in the public debate on homosexuality in the country. Events in the past decade indicate that homosexuality is a phenomenon that cuts across all sectors of Malawian society. The public debate on homosexuality in Malawi started when two Malawians publicly conducted a gay engagement in Blantyre and were sentenced to 14 years imprisonment. Two polarized camps have emerged in the debate: on one hand, gay rights activists, liberal religious people, Western diplomatic community in Malawi, donor agencies, and the homosexual community in Malawi are holding the pro-homosexual position. They are arguing for the decriminalization of anti-homosexual laws. On the other hand, I have identified three different groups: the government, conservative religious people, and traditional leaders who are holding the anti-homosexual position. They are arguing for the continuation of the criminalization of homosexuality in Malawi.

The second major observation is that homosexuality in Africa is widely perceived as a Western phenomenon and just another import from colonialism. This assumption has led many people to believe that homosexuality is un-African. However, the book has demonstrated that homosexuality has been existent in Africa before the colonial era. It was valuable to traditional African societies because it was used by astrologers, diviners, rain-makers, warriors, and traditional healers to enhance the effectiveness of their various practices.

The third major observation is that the international lesbian, gay, bisexual, transgender, and intersex (LGBTI) lobby is based on the premise of human rights. However, the book contends that all UN international human rights instruments used in the homosexual debate do not explicitly mention sexual orientation as a basis of discrimination with the exception of the European Convention of Human Rights (ECHR) which is only applicable in Europe. Moreover, the African Charter of Human and People's Rights (ACHPR) does not explicitly make reference to the duty

of member states to recognize and give effect to LGBTI rights and, like most other international human rights treaties, it is in fact silent on the issue of sexual orientation. Hence, the international human right instruments are inadequate in guaranteeing the protection of LGBTI rights and ensuring the recognition and enforcement of LGBTI rights by UN member states.

The fourth major observation is that it has taken more than three centuries for some Western nations to guarantee LGBTI rights to their citizens; yet, they are expecting African nations to guarantee the same rights with immediate effect without allowing them to have ample time to engage in the homosexual debate. These attempts by Western nations to force African nations to legalize homosexuality are resisted through the passing of discriminatory legislation and an upsurge of homophobia.

In view of the above-mentioned observations, various stakeholders in the homosexuality debate in Malawi have a great responsibility towards its resolution. A sensitive issue like homosexuality needs open, tolerant, respectful and peaceable engagement rather than inflammatory and degrading attitudes. Points of view will definitely clash at some point, but we still need to create a conducive environment for continued dialogue until we reach an amicable solution to the debate.

Implications

This book argues that the solution to the homosexuality debate in Malawi does not lie in either the criminalization or decriminalization of homosexuality; neither does it lie in homophobia nor heterophobia. However, the solution to the homosexuality debate lies in achieving a harmonious co-existence of both heterosexuals and homosexuals by practicing mutual tolerance. Therefore, the book has the following implications to various stakeholders in the homosexuality debate in Malawi.

The Government of Malawi

The book has four implications for the Government of Malawi. These are:

- The government should decriminalize homosexuality. This will demonstrate government's tolerance to the LGBTI community which is a minority in Malawi.
- The government should enforce mutual tolerance by both heterosexual and homosexual people in order to curb human rights abuses based on sexual orientation and practice.
- The government should criminalize any form of homophobia and heterophobia in order to give legal protection and rights to both heterosexuals and homosexuals in Malawian society.
- The government should take a leading role in educating society by carrying out sensitization campaigns on gay rights, tolerance and acceptance of diversity. This will help the Malawian society to understand sexual diversity dynamics.

Gay Rights Activists

The book has four implications for gay rights activists. These are:

- To lobby through the UN to amend article 2 of the Universal Declaration of Human Rights (UDHR) to include sexual orientation as a basis of discrimination. This will oblige all UN member states to recognize and enforce sexual minority rights.
- To lobby through the Malawi Parliament to amend Section 20 (1) of the Constitution of the Republic of Malawi to include sexual orientation as a basis of discrimination. This will make the Malawi Government recognize and enforce sexual minority rights.
- To continue representing the LGBTI community in the constitutional review on the constitutionality of Section 153 (A) of the Penal Code vis-à-vis Section 20 (1) of the constitution regarding anti-homosexual laws. The constitutional review commenced in the High Court in Blantyre.

- To continue conducting LGBTI sensitization campaigns in the communities in Malawi. Community grass-root mobilization is the key factor in the struggle for minority groups because it is in the community where LGBTI people live and spend most of their time.

Religious Leaders

The book has three implications for religious leaders. These are:

- Religious leaders should faithfully teach the subject of homosexuality in accordance to their scriptures: the Bible and the Qur'an.
- Religious leaders should strive to understand the manifestations of homosexuality in the contemporary world and engage in a constructive theological reflection. It is not enough just to denounce the sin of homosexuality, but one needs to understand the various and complicated dynamics of the phenomenon and engage with the current manifestations of homosexuality in contemporary Malawian society.
- Religious clerics should re-evaluate their ministerial strategies so that they can effectively minister to people who practice homosexuality.

Traditional Leaders

The book has two implications for traditional leaders:

- It is important to acknowledge that culture is always in a process of change. Therefore, traditional leaders as custodians of culture should always exercise restraint in either resisting or accommodating change in regard to LGBTI issues. The cultural change we are experiencing in Malawi in regard to homosexuality needs to be properly managed. If change is forced on people it will be violently resisted through homophobia and if change is delayed it will result in cultural shock when people suddenly realize that their own sons and daughters are homosexuals.
- Traditional leaders should ensure the protection of homosexual people in their communities because LGBTI people who are a minority live in the same communities and they deserve all protection.

Malawian Society

The book has one implication for the Malawian society. This is:

- The Malawian society should practice mutual tolerance in order to achieve a harmonious co-existence of heterosexual and homosexual people. This means that heterosexual Malawians should not execute homophobia to homosexual Malawians. Also, homosexual Malawians should not execute heterophobia to heterosexual Malawians.

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All over the world homosexuality is a hotly debated issue and the legal positions vary from recognized gay marriage to homosexuality being a criminal offence, as it is the case in Malawi.

This book, written by a theologian, presents, for the first time, the Malawian debate in full and puts it into a worldwide perspective.

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